California Historical Quarterly

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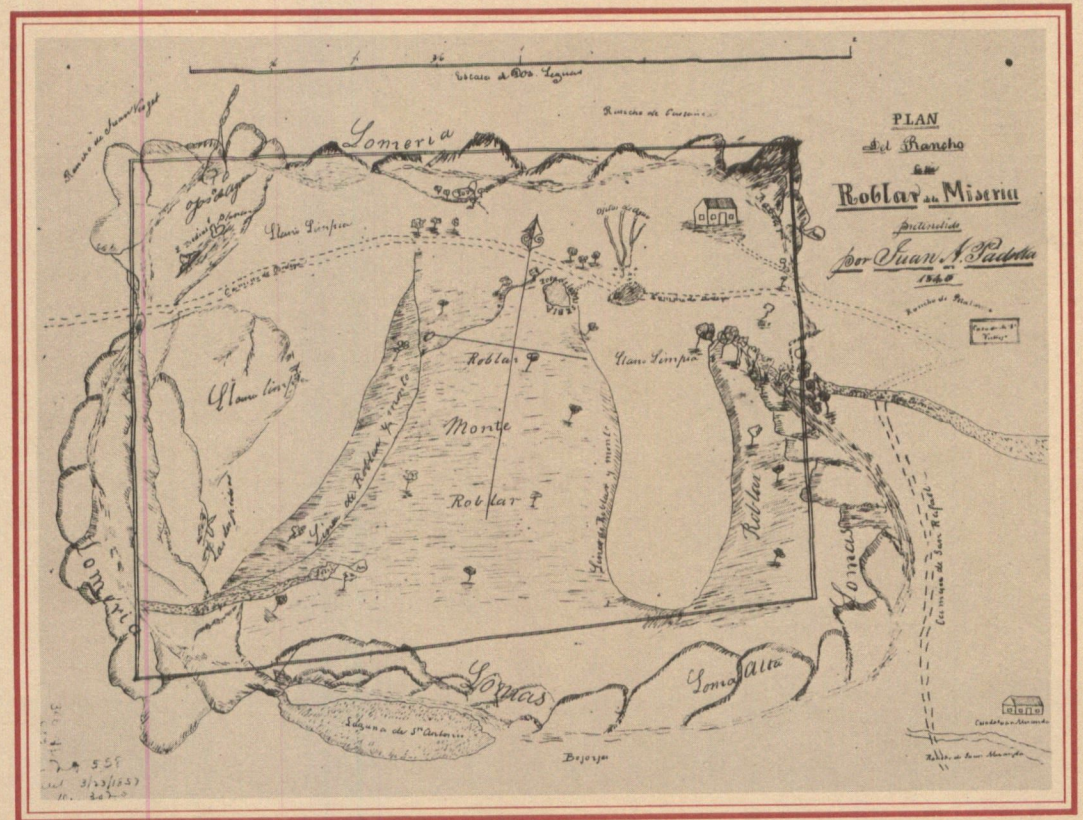
December 1971



COVER: One of the conditions for gaining a land grant in Spanish or Mexican California was preparation of a *diseño* outlining the boundaries of the lands sought. Our cover shows one of these lively rustic documents, in this case the map of Rancho Roblar de la Miseria, a tract of over 16,000 acres stretching from present-day Petaluma almost to Sebastopol, granted to Juan Padilla in the spring of 1846. Padilla was the officer whose men captured and executed Thomas Cowie and George Fowler not far from the *rancho* during the Bear Flag excitement. Most of Roblar de la Miseria was later sold to General Vallejo's son-in-law, John B. Frisbee, for $24,000. In this issue of the *Quarterly*, the distinguished historian Paul Gates places some long-held myths regarding the U.S. confirmation of Mexican grants in California in new perspective.

California Historical Quarterly

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Frank H. Winter
Historian with the National Air and Space Museum at the Smithsonian Institution.
and
Mitchell R. Sharpe
Historian with the National Aeronautics and Space Administration.

The California Whaling Rocket and The Men Behind It

A YEAR BEFORE James Marshall struck gold, Captain Thomas Welcome Roys in the bark *Superior*, out of Sag Harbor, New York, became the first American whaler to penetrate the Bering Straits into the Arctic Ocean, discovering vast, new fertile fishing grounds. In a sense, he made a whaling industry in California possible and profitable. Thirty years later, on the last voyage of his career, he was also to introduce the California whaling rocket. Roys was not the originator of the rocket harpoon—the idea dated from the middle of the seventeenth century. However, all earlier attempts to perfect the device had proved unsuccessful.[1]

The intriguing story of the *California* whaling rocket literally burst onto the scene in the summer of 1856. Roys was off the Portuguese coast in the bark *William E. Safford*. The vessel had been rigged with a new and powerful harpoon gun of his own invention. In one unfortunate try with the gun, it burst, leaving its creator without his left hand. Though the first mate amputated it on the spot, further medical treatment was necessary for the captain. The *Safford* at once headed to the nearest harbor, Oporto, Portugal.[2] During his brief convalescence there, Roys first heard of the details of rockets, but not those of the festive species. Apparently, he was told of the fire and bomb missiles launched in great numbers on both sides during the siege of Oporto in 1832-1833 during the Portuguese Civil War. The more he heard of their velocity, light weight, range, and penetration, the more he was led to consider these ancient but crude fireworks ideal for throwing bomb harpoons into whales. He must have been struck most of all by the rocket's lack of recoil, a feature which facilitated its use from a small boat.

On his way from Portugal to England, after being released from medical care, Roys must already have been deeply immersed in working out the details of his invention. No sooner had his ship dropped anchor in British waters than the one-handed captain took out a patent. Not until he reached home, some four years later, did he find either the craftsman, the promoter, or the capitalist to help turn this promising idea into a reality. In Gustavus Adolphus Lilliendahl he found all three. A master pyrotechnist who owned and operated a New York fireworks factory with a curious sideline—a whalebone cutting house—Lilliendahl had amassed a considerable fortune through his talent for business. Probably Roys and Lilliendahl met through the latter's whalebone enterprise, then reaping enormous profits from the sale of bustle and corset stays, coach whips and canes.

Lilliendahl must have foreseen even greater returns through his new partner. His "Excelsior Fireworks Factory," in turning out the propellant and explosives for the harpoon, could harvest not only profit but publicity. In addition, his corseted clients could be regularly supplied with whalebone. Soon the two men were granted a U.S. patent on the whaling rocket.[3]

In the 1865-1866 whaling season, they set off for the Arctic together to put their new harpoon to the test. Roys commanded the expedition, which was composed of the *Reindeer* of New Bedford, the *Visionary*, and some smaller ships. Headquarters were established at a tiny fishing village on the east coast of Iceland, called Seydisfjord.

While catches went well—40 whales by the end of September, 1866—the expenses of experimentation could hardly be offset. The veteran whaler Roys left for more fertile waters. Lilliendahl remained for a time, until he, too, was forced to leave in deference to impending bankruptcy.[4]

Captain Roys continued to roam. Down the eastern seaboard he sailed, testing and perfecting his whaling rocket where he could. About 1867, he rounded the Horn for the second time in his career and came up the length of the Californias. He must have been especially on the lookout for the California greys which made their annual migration down this coast.

In search for the shy but oil-rich North Pacific bowheads, Roys was compelled to give chase far beyond California. His latest vessel, the steamer *Emmet*, tracked the leviathan's migratory routes to Vancouver Island, British Columbia. The *Emma* and later the ill-fated brig *Byzantium* fished in Canadian waters from 1868 to 1871 with South Georgia Island serving as base. In 1871, the *Byzantium* went aground off British Columbia and was plundered by Indians. Roys' expeditions had not been successful. The North and the vagaries of his rockets had defeated him. In addition, he was not well. In the fall of 1871, he took passage in the lumber ship *Wildwood* for San Francisco.[5]

San Francisco was booming. As one contemporary Canadian observed, San Francisco "was the key to the Pacific." The purchase of Alaska in 1867

had thrown open the Alaskan whaling grounds, and whalers, most of them from New Bedford, the dowager queen of the American whaling ports, had made San Francisco their Pacific base. New Bedford's fleet was being shanghaied west.

While laying over at San Francisco in November, 1871, Roys took his rocket harpoons and rocket guns—"full of difficulties and errors"—to Hawkins & Cantrell's Machine Works on Beale Street. As this firm was equipped to fabricate everything from steam engines to mill and mining rigs, it could easily fill Roys' orders for a new rocket press, mould, and rammers, as well as the steel and brass rocket hardware.[6] A Mr. O'Brien made the press. Roys also made the acquaintance of another foundryman, a Scottish-born machinist named Hugh Hamilton Lamont. Lamont was to be the middleman in the California whaling rocket story.

Lamont does not seem to have improved nor even to have used the harpoon but to have acted more as its custodian. For, shortly after Roys had docked in San Francisco, the captain had fallen into such debt that he found it necessary to sell to Lamont at least partial patent rights to this and other inventions. On June 17, 1872, the first of at least four contracts was signed. Lamont received a one eighth share of Captain Roys' boat-detaching floats, one eighth for his cartridge shot invention, and one eighth for the rocket guns and harpoons. In addition, O'Brien was to receive compensation of $75 for making the rocket press and $300 for the rammers. Another contract was signed June 21, 1876, between the captain and Lamont.[7]

Unable to raise capital for voyages and suffering the effects of a chronic fever, the old sailor went to the warmer climate of San Diego for recovery. Instead, he grew worse and decided to retire even further south, just below the Tropic of Cancer, at the little Mexican fishing town of Mazatlán. He became a pathetic vagrant, quite literally a captain without a ship and a man without a country. On March 29, 1877, at 5 a.m. he died in the home of an American doctor, D. M. Brown, who had found him dazed, ill, and completely destitute. All he possessed were papers identifying him as a "T. W. Roys" and a manuscript "of no intrinsic value."

As no money was found to pay for Roys' burial, Doctor Brown notified the American consulate, E. G. Kelton, who raised the expenses partly out of his own pocket and partly by popular subscription amongst the town's small American community. One writer moralized on learning of Roys' death that he died "from want of exposure [sic] which goes to show that energy, pluck and ambition are not the sole elements of success."[8]

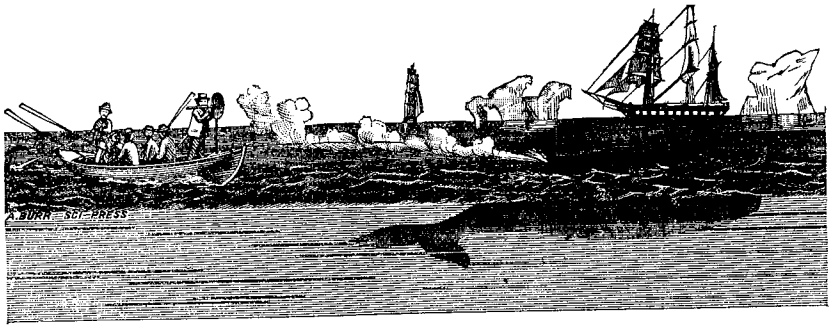
Meanwhile the real entrepreneurs of the California whaling rocket arrived in San Francisco. They were an intriguing pair. John Nelson Fletcher, the senior of the two, was originally from Ohio, having been born there about 1838. He was an itinerant pyrotechnist with a dubious character. For some unknown reason, he had enlisted under the alias "John

Baird" in a Union regiment at the close of the Civil War.[9] Robert L. Suits, Fletcher's partner in the whaling rocket venture, had been a Confederate soldier. He was born about 1846 in what later was to become High Point, North Carolina. At the age of 15, he began his career as a machinist in a local gunsmith's shop, helping fit locks and assemble guns for the war effort. In May, 1863, he applied to the Superintendant of Armories of the Confederacy for a position as a board and wage workman, but he was refused. When he became of age, late in 1863, he enlisted in Company E, 2nd Battalion, Armory Guard, which was a unit organized for local defense and was composed exclusively of employees of the Arsenal at Fayetteville, North Carolina. Undoubtedly he assembled Fayetteville rifles, pistols, and carbines, an experience that probably served him well when he later undertook the California whaling rocket. Suits' proficiency is evidenced by his rising to the rank of "fifth sergeant."[10] Suits' end-of-service records appear to be non-existent, but on the Union side, Private "John Baird" was mustered out July 12, 1865, at Greensboro, only a dozen miles from High Point.[11]

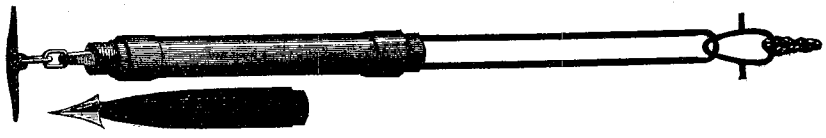
Two or three years after the war both men showed up in Baltimore. Both were also married in this city, Suits about 1867 and Fletcher in 1873. Fletcher's bride was 19-year old Lena (or Salena) Suits, Robert L. Suits' young sister. Thus, the former Confederate and Union soldiers became brothers-in-law. Suits worked as a machinist in Baltimore and Fletcher—the name he now returned to—possibly did some work for Baltimore's longtime leading pyrotechnists, John and William Bond. By 1875, however, the Suits and Fletchers again pulled up their tenuous roots and moved to California, settling in San Francisco.[12]

Robert, now skilled in his craft, was hired by the old (by Western standards) Hinckley & Company Fulton Foundry, then located at Frémont and Tehama Streets. Established in 1855, the hallmark of the Fulton works was versatility, their output running the gamut from locomotives to quartz mills and crushers. Among the machinists at Fulton was Hugh Hamilton Lamont.[13] It is difficult to determine precisely when Lamont broached the subject of the whaling rocket to the new employee, but this certainly must not have been more than a few months after Robert's arrival; for by 1877, the year of Captain Roys' demise a thousand miles to the south, the California whaling rocket was born.

"California" was probably added to the generic name whaling rocket to distinguish it from its predecessor, the Roys-Lilliendahl variety. In James Temple Brown's *The Whale Fishery and Its Appliances* (Washington, D.C., 1883) there is a "California gun harpoon" similarly called to distinguish it from its competitors on a heavy market. So far as we know, with Roys' death and with Lilliendahl's concession shortly turned over to Fletcher, the California brand whaling rocket was without competition.



CALIFORNIA WHALING ROCKET



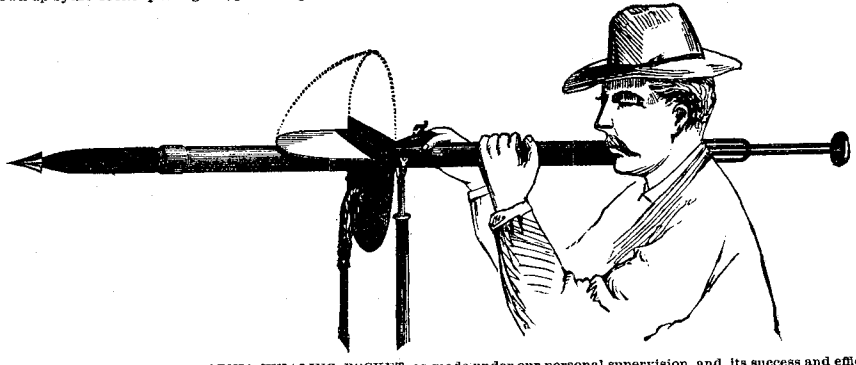
And Patent Bomb Lance,

MADE WITH IMPORTANT ATTACHMENTS AND IMPROVEMENTS BY

FLETCHER, SUITS & CO., SAN FRANCISCO, CAL.

Our apparatus consists of a gun metal cylinder, filled with a peculiar composition made only by ourselves, to which is attached in front, a bomb with a barbed point; inside the bomb is an explosive charge and a chain toggle, which is released by the bursting of the shell on entering the whale; an iron shaft is attached to the rear end of the rocket, through which the whale line is spliced.

There is absolutely no recoil, and it is fired from the bow of an ordinary whale boat, as illustrated above. The hinged flonge is thrown up bythe rocket passing out, protecting the face from injury.



The great value of the CALIFORNIA WHALING ROCKET, as made under our personal supervision, and its success and efficiency in killing and fastening to whales at THIRTY FATHOMS, is fully attested by the following whaling Captains who have witnessed its practical working, have fitted their vessels with them this present season, and who recommend them to all parties interested in the whaling business.

Capt. THOMAS W. WILLIAMS, bark Francis Palmer.
" BERNARD COGAN, bark Rainbow,
" EZRA B. LAPHAM, bark Progress,
" FREDERICK A. BARKER, schooner Leo,
" LEWIS H. WILLIAMS, brig Hidalgo.

Capt. EBENEZER F. NYE, bark Mt. Wollaston.
" LEANDER C. OWEN, bark Coral,
" WILLIAM H. KELLEY, bark Dawn,
" JAMES McKENNA, schooner Alaska,
" JAMES CAUGHILL, schooner Newton Booth.

FLETCHER, SUITS & CO., 407 Front Street, San Francisco, Cal.,
To whom all communications must be Addressed.

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CELEBRATED LAUNDRYAND CORN STARCH

— AND —

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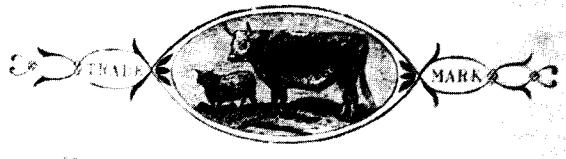


[illegible] Brand.

AND AGENTS FOR

John Dwight & Co's Full-Weight Soda and Saleratus.

CASH PAID FOR DRIED FRUIT.

1958

Courtesy Society of California Pioneers

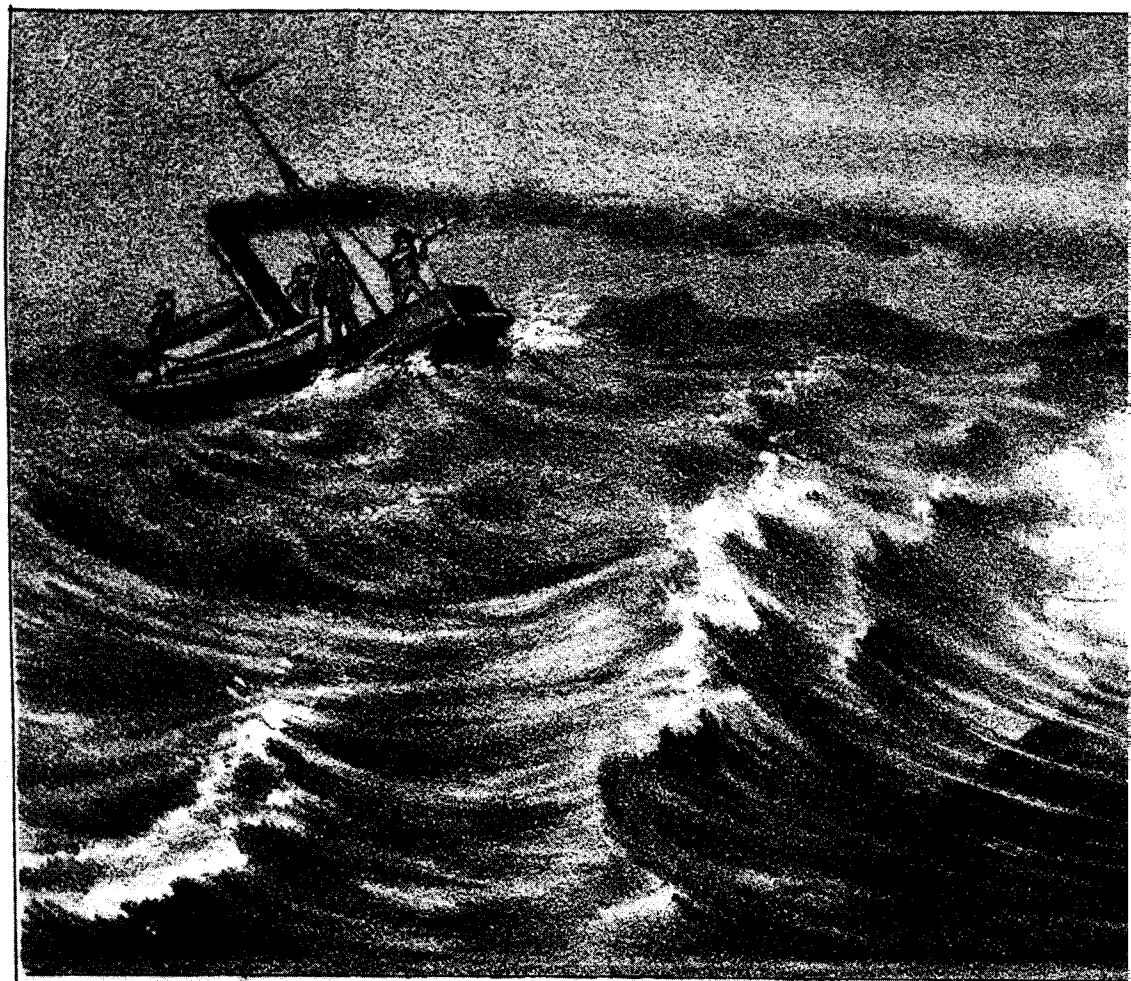
Fletcher, Suits & Co., 407 Front Street, San Francisco, was the sole manufacturer in the country, indeed, perhaps the world. Located at the same address was a curious wholesale-retail grocery known as Church & Co. that literally sold everything from soup to nuts and generally billed itself as "the only manufacturers of fireworks in California." By special agreement with Church, Fletcher added his whaling rocket interest as a subsidiary firm, and called it "The Fletcher, Suits & Co." With a minimum of capital, he overnight moved into a ready-built business. Church & Co. had a particularly well-located sales office. The factory was on Market Street near Seventh with the sales office on Front. Fletcher had in his brother-in-law's talents and experience an equally ready-made asset. It was Robert Suits' job to machine the harpoon's metallic parts and to install the intricate firing mechanism. No doubt he did this while "moonlighting" after hours at the foundry. Hugh Lamont may have been one of the subcontractors.

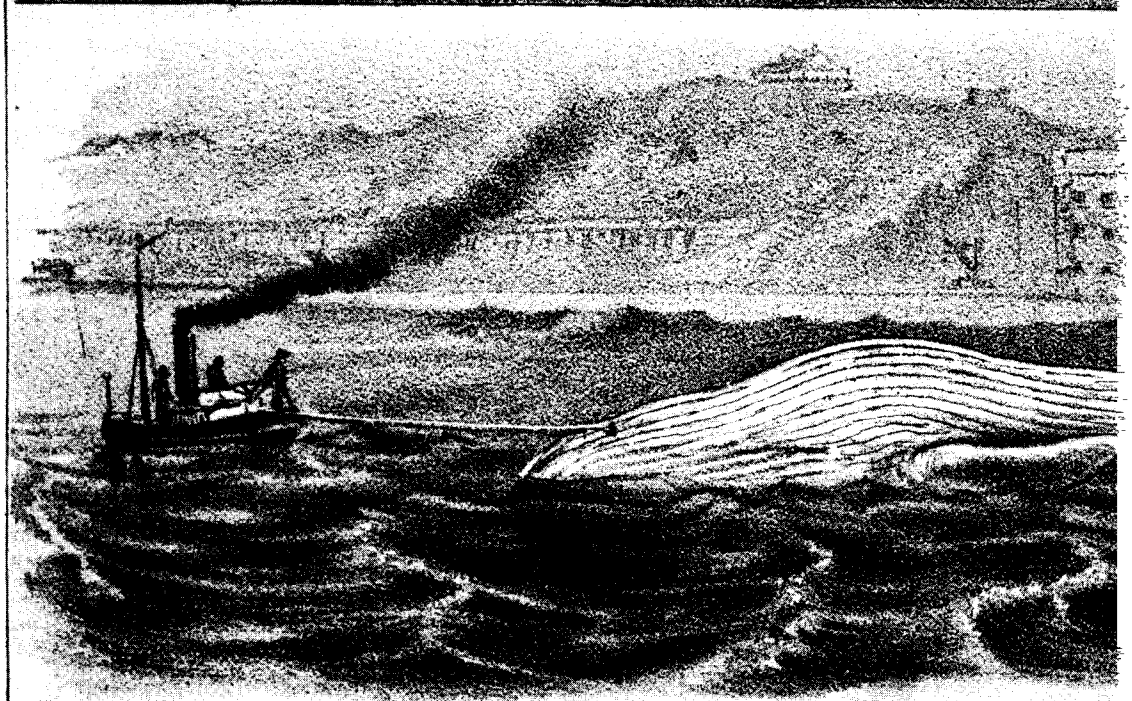
From 1878, John Fletcher began negotiating with Gustavus Lilliendahl, then of Jersey City, New Jersey, for further manufacturing and patent rights. Interestingly, he reverted back to his alias, John Baird, and was to continue to do so every time he had any connection with New Jersey. By the end of 1878, the harpoon was still known as the Roys & Lilliendahl whaling rocket, though several sets had already been sold to prominent Pacific coast whalers and some glowing testimonials to them had been generated.[14]

Concurrently with Fletcher's promotion of the rocket, he and Suits strove to eliminate its drawbacks. They were determined to go into mass-production on a cheaper and more profitable basis. Captain Roys and his partner had made the harpoons too light, they found, and they were consequently charged with too little powder. Fletcher and Suits' modifications produced a rocket bomb lance 6½ feet long, weighing 32 pounds; even a cabin boy could operate it. The Church & Co. laboratories also came up with an exclusive, more powerful black powder formula for the improved rocket. Fletcher and Suits began to boast that their harpoon could fasten to a whale at 30 fathoms (130 feet), which was a considerably greater distance than could be reached even by gun lances.[15]

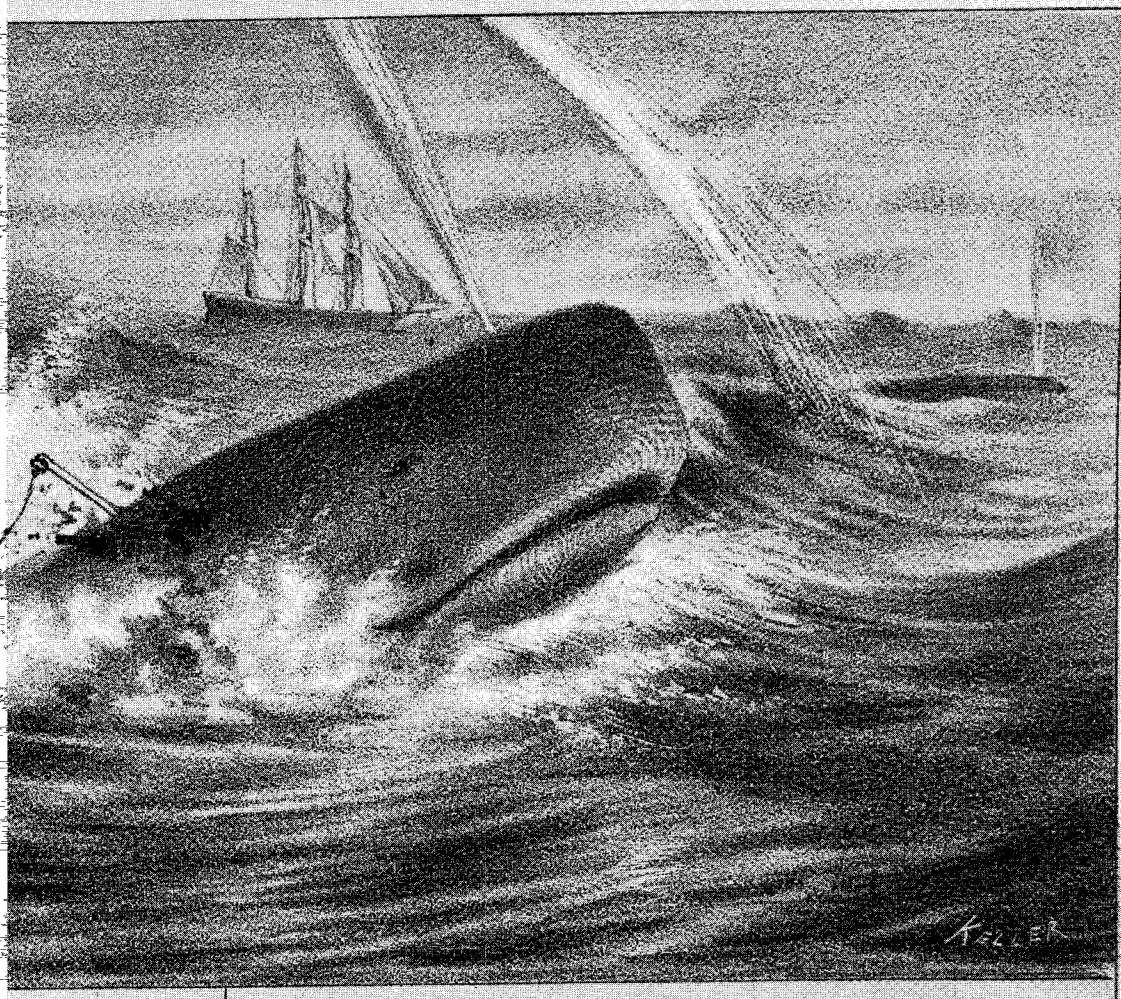
The resourceful Fletcher also acquired the use of a small steam launch to ply California coastal waters to test the rockets. This vessel was probably the "small steam propeller" *Rocket*, a five and a half ton boat of San Francisco register. The boat apparently was built and owned by Robert Suits' foundry. Throughout 1878, outside the harbor, the brothers-in-law killed 35 whales with their rocket. These were hump-backs, sulphur bottoms, and fin-backs.[16]

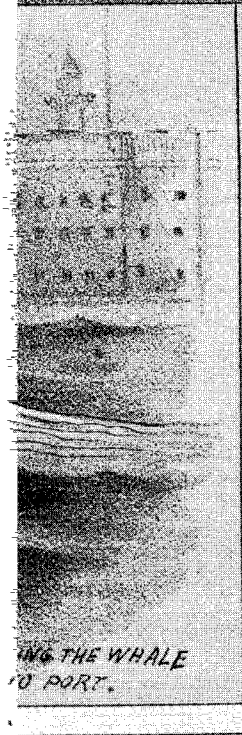
Around Christmas of that year they also gave a public trial of the rocket in the Oakland Creek (now the Oakland Estuary) with a tub serving as the victim. Observers were reported highly pleased with the demonstration, one



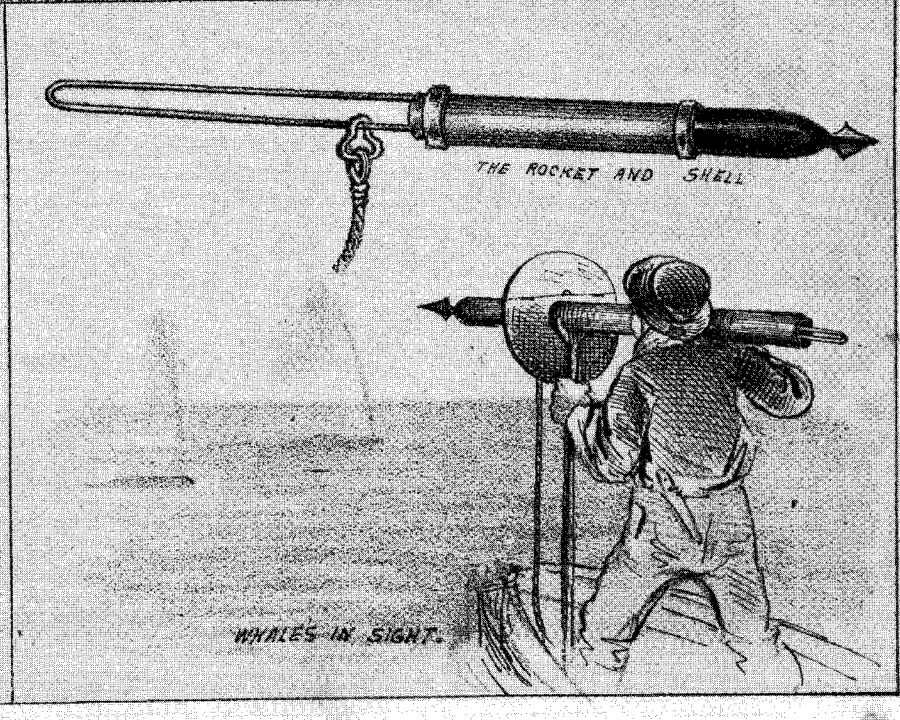


DRAWN FROM NATURE BY OUR ARTIST.





ING THE WHALE
TO PORT.



ON THE PACIFIC COAST.

newsman declaring that any of the rockets would easily have killed a whale. "Already some six vessels," he added, "have [been] outfitted with this apparatus for the Arctic, each carrying from five to fifty shots." By 1879, Fletcher and Suits seemed firmly established. In May of that year they began regularly advertising in the *Whalemen's Shipping List and Merchant's Transcript* of New Bedford, the American whale fishery's most venerated organ. The publisher and proprietor, Eben P. Raymond, was even induced to serve as an east coast agent for the whaling rocket after witnessing a special trial on Pope's Island.[17]

Between 1878 and 1880, at least fifteen whaling barks, brigs, steamers, and schooners out of San Francisco were equipped with the new California whaling rocket. Most of the vessels were New Bedford owned and registered, though San Francisco was almost a permanent home port. Just about all of them fished in the North Pacific and Arctic, principally for the bowheads that calved in the Sea of Okhotsk.

Captain Thomas W. Williams of the famous Williams dynasty of whalers and ship owners out of New Bedford and later, San Francisco, was one of the first to be shown the harpoon and became the largest buyer. He purchased a great number for his vessels, the barks *Francis Palmer*, *Coral*, and *Dawn*, and the brig *Hidalgo*, and "would not go on a whaling voyage without . . . the apparatus."

Another New England man, Captain James Caughill of the schooner *Newton Booth*, was reported to have "been using these rockets down the [California] coast so successfully that he has telegraphed for a new supply of shots." Perhaps a more unequivocal testimonial came from Captain Bernard Cogan of the bark *Rainbow*. Though the inventor of his own improved method of spearing whales—the Cogan breech-loading bomb gun—he was "so favorably impressed" upon seeing a few fired that he ordered "a number of them." Whaling master Ebenezer F. Nye, of the bark *Mount Wollaston*, took out 15 shots and two launchers. And the 44-ton killer boat, the San Francisco steamer *Daisy Whitelaw*, "very successfully" hunted finbacks with them through the Farallon Islands and up to Drake's Bay. She caught an unusually large female specimen during a short Independence Day excursion in 1880, and moored it at the Second Street Wharf for public exhibit prior to oil processing or "trying out." The *Whitelaw's* skipper (Stutzman) and owner (Thomas P. H. Whitelaw) went so far as to advertise their 73 foot, ninety-ton catch in the local papers and charge admission. Similarly, the tiny steamboat *Rocket* took Fletcher, Suits & Co. "bomb rockets" regularly up to the "California Heads" as far as Point Reyes. In one close shot at a sulphur bottom, the harpoon went completely through the whale and burst on the other side.[18]

Some were also purchased by the Northwest Whaling Company, or Northwest Trading Company, of Killisnoo Island, near Sitka. They suc-

cessfully captured finbacks and humpbacks, apparently firing the rockets from the deck of the company's small steamer, *Favorite*. Even a ship bearing the Russian flag was "plentifully supplied." Though mastered by a Yankee captain, the steam brig *Siberia* was legally bound to fly the banner of Imperial Russia in order to fish off Vladivostok.[19]

For all Fletcher's glowing claims and wide-ranging salesmanship, the California whaling rocket venture was doomed to failure almost as soon as it was launched. By 1880, the whale fishery everywhere was on the decline. Primarily, the industry's death knell was sounded by the sinking of petroleum pumps and the increasing substitution of cheap natural gas or kerosene for whale oil.

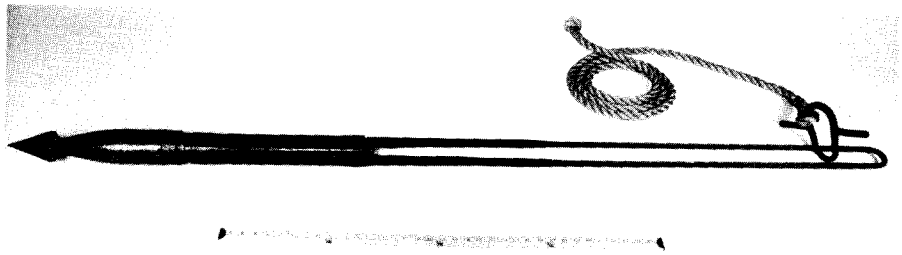
California had experienced its "black gold" strike in 1860, thereafter, the state's whale fishery slumped. Sperm oil that once fetched $2.55 a gallon on the San Francisco market had dropped to 25¢ by Fletcher's day. By 1878, in fact, the same season that saw Fletcher, Suits & Co. exhibit their wares to Barbary Coast whaling masters, the *San Francisco Chronicle* began advertising wholesale dealers of "water white in barrels" (kerosene) and Downer's mineral sperm oil (a petroleum derivative).[20]

There were also difficulties with the rocket itself. It was far too bulky and expensive. Hand irons cost only 75¢, bomb lances (exclusive of guns) were several dollars, but Fletcher rockets were each as high as $50. The rocket also remained uncertain, particularly in its ignition. Despite built-in precautions, rocket blasts might also sear whale lines, causing them to part. A more subtle drawback was that veteran mariners were apt to regard the new fangled whaling rocket or anything else so radically innovative with the gravest skepticism and pre-formed prejudice.[21]

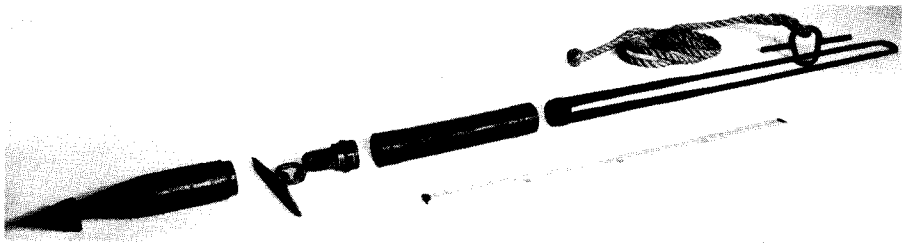
From 1880 on affairs went noticeably worse for Fletcher, Suits & Co. With the dwindling of San Francisco's whaling fleet, Fletcher himself sought to sell his rocket in the whalemen's own grounds. He went "whaling, fishing and trading" in Alaska, but met with no success. He badly burned his already rheumatic hands when a deadly mixture of potassium chlorate and sulfur exploded. Probably he was preparing a new rocket bomb lance formula.[22]

In 1881, Fletcher did sell at least one rocket. Charles D. Voy, an independently wealthy naturalist, taxidermist, and "capitalist" from New York, bought a repainted, second-hand model for $16 from Fletcher for the Smithsonian Institution in Washington. It was later displayed in St. Louis in 1904 in the Louisiana Purchase Exposition. Though the rocket launcher appears to be missing, the harpoon specimen is probably the most complete example of the California whaling rocket extant.[23]

Only in 1891 do we hear of any other possible employment of the rocket. Reginald B. Heggarty, Curator of the Melville Whaling Room, New Bedford Free Public Library, first heard of the rocket as a young boy



A specimen of the California Whaling Rocket from the collections of the National Air and Space Museum, Smithsonian Institution. The total weight of the rocket and shell assembly is 28 pounds. The bomb itself weighs 10 pounds. When the bomb exploded, the toggle at the forward end of the rocket tube would prevent the "bomb lance" from pulling free of the whale. The simple "gun" from which it was fired is missing, but shows clearly in the advertisement for the weapon.



when he listened to his father's yarns of his whaling days out of San Francisco in the 1880's and 90's. The father, William Heggarty, seems to have either used or *heard* of the harpoon while whaling on the *Alice Knowles*, captained by Ezra B. Lapham. Years before, Lapham had purchased a rocket for the bark *Progress*. Even if he or his crew no longer used the harpoon, it left a lasting impression.[24]

Fletcher became foreman of the California Fireworks Co. on Front Street (successors to Church & Co.) by the early 1890's, but there is no evidence that the California whaling rocket survived that late or that it was still for sale. On the contrary, it seems that over a decade earlier the short-lived Fletcher, Suits & Co. had entirely dissolved and that their one product ceased to be manufactured.[25]

The protagonists in this experiment had gone their separate ways. Lamont stayed in the Bay area and died in Oakland in 1926, at 89. He had remained a machinist, as did Suits, though both were with different foundries. Suits died in San Francisco about 1890.[26] The shadowy Mr. Fletcher continued to drift. Sporadically, he mended shoes and also briefly tended bar in a Barbary Coast saloon. By the mid-90's, he permanently settled in the East. In New York City, the amorous "widower" John Nelson Fletcher, who had been separated since 1880 from his wife, married a twenty-year old Hoboken girl.[27] The former Lena Suits Fletcher, whom he had never

bothered to divorce, was still living in Oakland at the time.[28] From about 1895, as "John Baird," he took up residence in New Jersey and became a flagman with the Central Railroad of New Jersey. On February 20, 1903, he died in Newark and was buried under his alias, his tombstone bearing the inscription: "John Baird—Co. A—9 NJ Inf."[29]

With the calamitous earthquake and fire that swept San Francisco three years later in 1906, the essential records and buildings of the California whaling rocket, a rare and romantic piece of Californiana, likewise passed into oblivion.

NOTES

1. Arthur C. Watson, *The Long Harpoon* (New Bedford, 1929), 45-50. As early as 1638 the Dutch pyrotechnist Abraham Speeck of Amsterdam fashioned whaling rockets for a well known Dutch whaling master who fired one off Spitzbergen, but it was too heavy to be practical: Municipal Archives of Amsterdam, Notorial Depositions Nos. 1550 (for 1638), 127 and 1280 (for 1639), 153. Roys appears to have been unaware of this and other earlier whaling rockets.

2. National Archives, Record Group (RG) 78, letter of Thomas W. Roys to Lt. Matthew F. Maury, USN, Oct. 9, 1860.

3. *Ibid.*; Arne Odd Johnsen, *Finnmarksfangstens Historie 1864-1905* (Oslo, 1959), I, 75-80; British patent No. 965 for "Rocket Guns," of April 16, 1859 (Communicated by William Walker, Roys' attorney); *Wilson's New York City Directory*, 1858-59, 170, 470; Roys' first U.S. patent was No. 31,190 for "Improved Harpoon-Guns" of Jan. 22, 1861.

4. Johnsen, *Finnmarkspangstens Historie*, 75-80; *Tidskrift For Fishere* (Copenhagen), 2. Arg. 1868, 50-69.

5. The Victoria (B.C.) *Colonist*, July 13, 1868, 3; Oct. 25, 1871, 3; Nov. 22, 1871, 3; San Francisco *Examiner*, Nov. 25, 1871, 4.

6. National Archives, RG 78; U.S. Patent Office, Patent Sale Instruments, Roys and Lamont, June 17, 1872 and June 21, 1876, Liber G-22, 365; *San Francisco Directory* 1872, xcv, 310.

7. Patent Instruments, 365; San Francisco *Examiner*, Dec. 28, 1926, 4; *U.S. Census 1880*, San Francisco, XII.

8. National Archives, Despatches from U.S. Consuls in Mazatlán, 1826-1906, IV, Microcopy No. 159, Roll 4; Harry D. Sleight, *The Whale Fishery on Long Island* (Bridgehampton, N.Y., 1931), 144. Letter to the authors, Mrs. Helen M. Gordon, Tom's River, New Jersey, Sept. 2, 1970.

9. National Archives, RG 15, Civil War Pension Claim of John Nelson Fletcher, alias John Baird, Pension No. 116,904; New York City, Office of City Clerk, Certificate of Marriage No. HD 12175-91.

10. Letter from N.C. Dept. of Archives and History, Raleigh, N.C., Nov. 12, 1969, to authors; National Archives, Confederate Papers Relating to Citizens or Business Firms, Roll 996, Microcopy 346; National Archives, Compiled Service Records of Confederate Soldiers . . . of North Carolina, Roll 122; Microcopy 270.

11. Fletcher Pension Claim, Letter from N.C.

12. Baltimore Directories, 1867-1872, *passim*; *San Francisco City Directory*, 1875, 974, 1876, 311.

13. S.F. *Directory*, 1875, 439, 696; S.F. *Journal of Commerce*, March 27, 1884, 2.

14. Fletcher Pension Claim; S.F. *Mining & Scientific Press*, (Dec. 28, 1878), 401; XXXVIII (April 5, 1879), 209.

15. *Mining & Scientific Press*, XXXVII, 209.

16. *Ibid.*; Director of Customs, S.F. District, RG 36, *Records of Steam Vessels*, (1875-1898), 27; Customs, *Index of Conveyances of Vessels*, 1877-1892, 212.

17. *Mining & Scientific Press*, XXXVII, 209; New Bedford *Whalemen's Shipping List* (May 13, 1879), I, 2.

18. *Ibid.*; S.F. *Daily Alta*, July 4, 1880, 1, July 10, 1880, 4; S.F. *Examiner* July 10, 1880 2; S.F. *Chronicle* July 10, 1880, 4; *The American Naturalist* (April, 1880), 292-295.

19. *Bulletin of the U.S. National Museum*, No. 27, "Descriptive . . . Report Upon the . . . Fisheries" (Wash., D.C., 1884), 281; Letter from Alaska Historical Library, Juneau, March 2, 1970, to authors; Hare, *Salted Tories*, 57.

20. S.F. *Chronicle*, Oct. 6, 1879, 2; Sept. 23, 1879, 2.

21. Smithsonian Institution, Smithsonian Archives, Official Incoming Correspondence, 1879-1882, C. D. Voys to Spencer F. Baird, Jan. 5, 1881, and Feb. 7, 1881; Interview, F. H. Winter with Reginald B. Heggarty, March 24, 1970, New Bedford, Mass.

22. Fletcher Pension Claim.

23. Smithsonian Institution Archives; Oakland city directories, 1886-1892, *passim;* S. F. *Chronicle*, Aug. 29, 1895, 8, S. I., Accession Card 10081 W. de C. Ravenel, *U.S. Commission of Fish . . . Its Exhibit At the Louisiana Purchase Exposition, St. Louis, Mo., 1904* (Wash., D.C., 1904), 37; What appears to be a partial specimen of a California whaling rocket, possibly one fired on Pope's Island in 1879, exists in the New Bedford Whaling Museum.

24. Heggarty Interview; *Shipping List.*

25. *San Francisco City Directory*, 1894, 555.

26. S.F. Directories, 1876-1890, *passim;* S.F. *Examiner*, Dec. 28, 1926, 4, 5; *Langley's San Francisco Directory*, 1895 1423; Letters from S.F. Dept. of Health, S.F., Sept. 8, 1970, to authors.

27. *S.F. City Directory*, 1881, 361; 1884, 457; 1894, 555; Fletcher Claim, Certificate of Marriage.

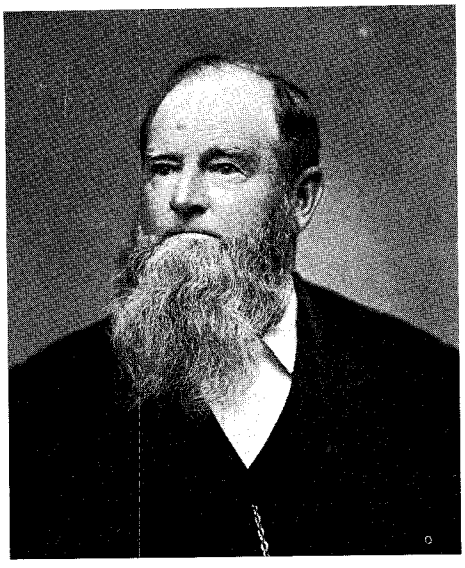
28. National Archives, RG 15, Civil War Pension Claim of Mortimer Gilbert, Pension No. WO 997-301. Mortimer Gilbert Claim, S.F. *Chronicle*, Aug. 17, 1924.

29. Fletcher Pension Claim; *Newark City Directory*, 1899, 229; New Jersey Dept. of Health, Trenton, Death Certificate, John Baird, No. 1974; Letter from Fairmount Cemetery Association, Newark, N.J., March 12, 1970, to authors.

PORTRAIT OF A BOOM TOWN

San Diego in the 1880's

by Larry Booth • Roger Olmsted • and Richard F. Pourade



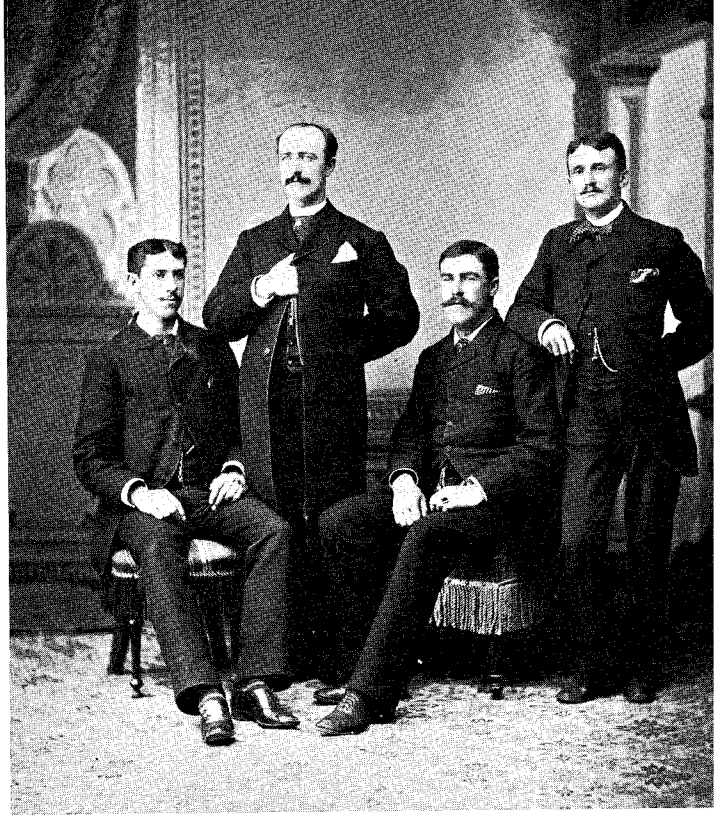
On the eve of the great Southern California land boom of the 1880's, San Diego was still very much Alonzo E. Horton's town. Indeed, the little city of some twenty-five hundred inhabitants might as well have been called "Hortonville"—as was the town in Wisconsin that he had founded at the close of the Mexican War. When the fifty-four-year-old Horton had stepped ashore on April 15, 1867, New San Diego was nothing but the ragged remains of an abortive city-building venture that had been backed by William Heath Davis in 1850. To Horton, "It seemed the best spot for building a city I ever saw." As for the village (Old Town) that was San Diego proper, Horton allowed that he would not pay five dollars for title to the whole place

The very day that he landed, Horton gave the county clerk ten dollars to cover the costs of electing a new Board of Trustees, the legal term of the old board having long since expired; and on May 10th, to the amazement and amusement of the populace, he bought at auction 960 acres at the excessive price of 27½¢ an acre. Included in this purchase was most of what became downtown San Diego.

Alonzo Horton never became a millionaire; the brief Texas and Pacific Railroad boom of 1871-1873 hurt him as much as it helped him (and San Diego). Yet before he was sixty-five he was firmly located in Horton's Addition. In the 'seventies there was Horton's Hall, Horton's Wharf, Horton's Bank Block, Horton's Gardens, Horton's Plaza, and above all, Horton House.

Horton House, "the finest hotel south of San Francisco," was commenced on the first of January, 1870, and opened on October 10th of that year. It boasted 100 guest rooms, twenty of them located on the first floor near the well-appointed dining room for the convenience of invalid health-seekers.

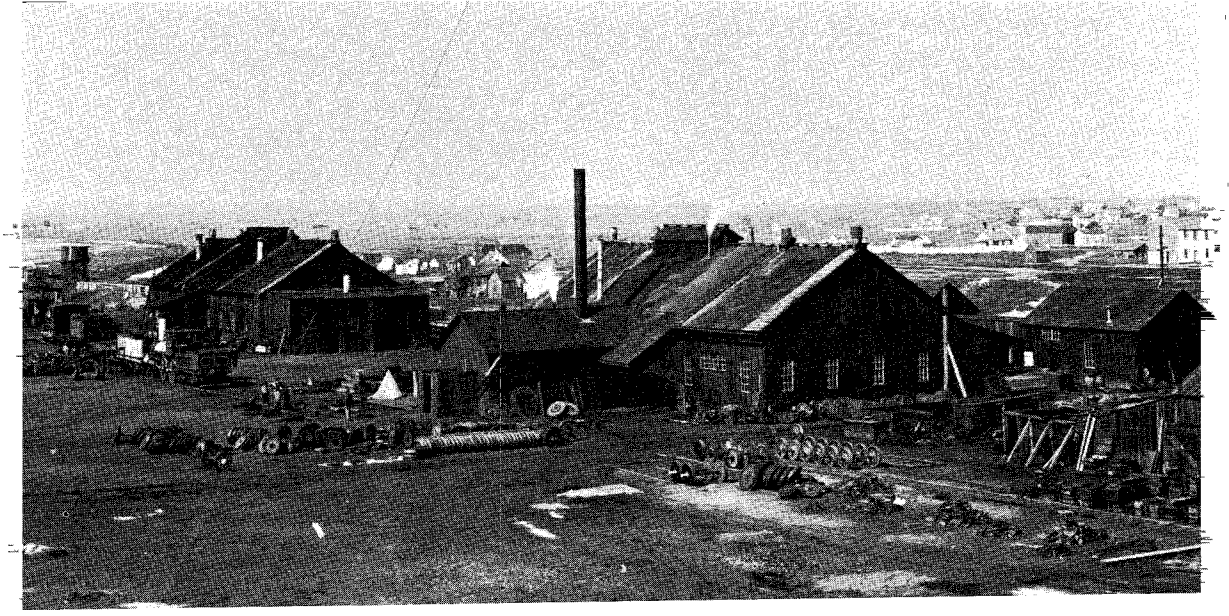
The leader of the band. . . . J. M. Dodge (second from left) was the cornetist of San Diego's City Guard Band when it toured the cities and whistle-stops of the East in a grand civic booster effort of 1887.

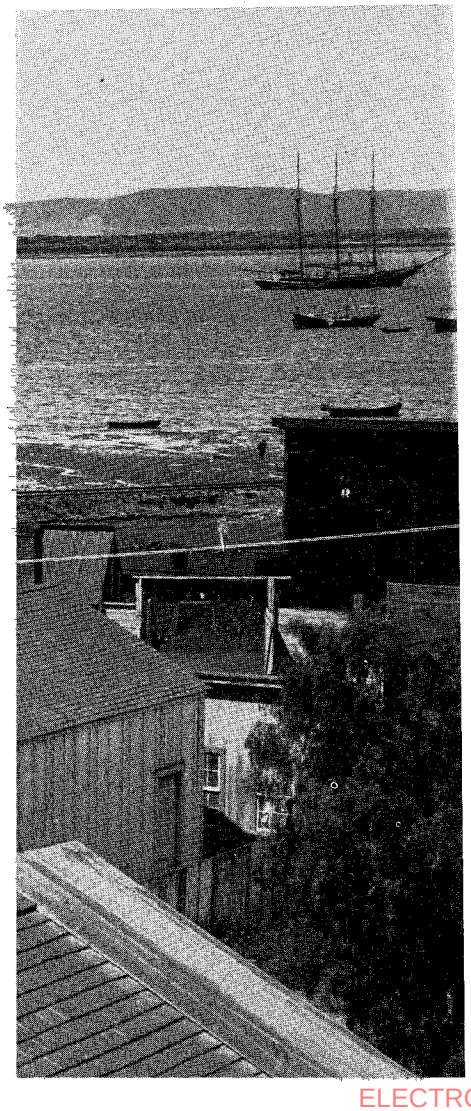


Horton lost his $125,000 hostelry in foreclosure proceedings during the aftermath of the Texas and Pacific boom, but it carried his name until it was demolished to make way for the forbidding U. S. Grant Hotel that occupies the site today. Horton House is seen below in 1886 or '87; the photographer has set up in a building overlooking Horton's Plaza, and the occasion seems to be one of the regular Sunday afternoon concerts of The City Guard Band.

Where it all started. . . . From the time of its founding, from its mission, hide trade, and early American days, it was obvious that San Diego was destined for some notable future by virtue of its great harbor, one of the few natural ports on a thousand miles of coastline. Skeptics could hardly deny the excellence of the port, but it was painfully easy for them to point out that there was no substantial use for it. Yet the port assured that so long as there was anybody in San Diego to buy, so long as the backcountry supplied gold or hides or produce or anything to sell, then there would be cheap and convenient transportation.

As the boom of the mid-'80's developed, the harbor became a busy place. In the view below a coastal steamer lies at the end of the Pacific Mail Wharf (née Horton's Wharf) at the foot of Fifth Street, just two days from San Francisco. Four lumber schooners lie in the harbor, discharging the timber that it took to build a city. And a sure sign of lively progress (which might escape the modern eye) is visible to the right of the Pacific Coast Steamship Co. warehouses—two

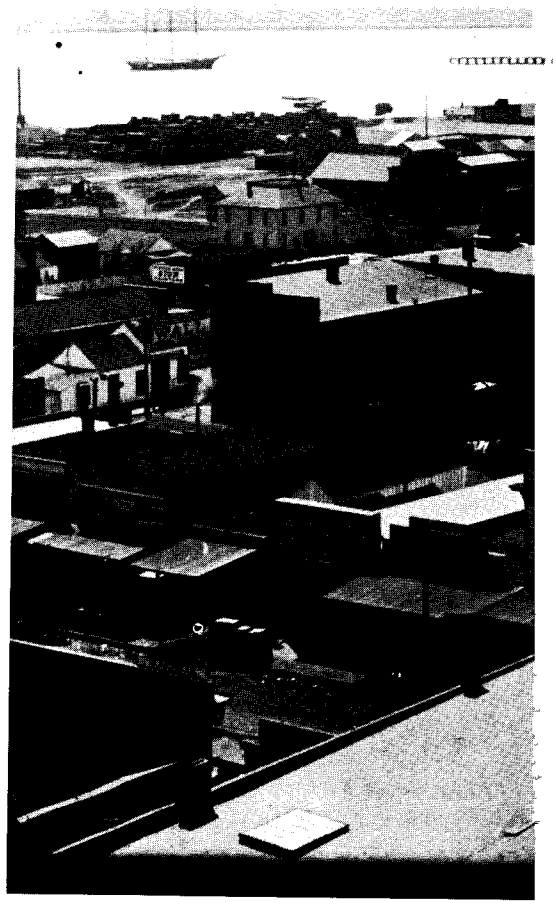




whitewashed bathing tanks (one for either sex) hauled up on the beach for the winter.

Where it all started (2). . . . The prospect of a railroad triggered the little boom of the early '70's; the imminence of a real railroad set the fuse to the big boom of the '80's. And what was the magic of a railroad when coastal freights and passage were reasonable and expeditious? Among other things, The Orient! San Diego was to be the transfer point of a fantastic trade between New York and Canton. Not just folks in San Diego, but supposedly more disinterested people in New York and Boston believed this. And thus it happened that National City (a few miles south of Horton's San Diego) became the western terminus of the great Santa Fe system. The year was 1881 when the Santa Fe started building north from National City to San Diego to Temecula and the main line. Above is National City, Gateway to the Orient.

The big boom flickered to life in an atmosphere of gloom, almost desperation. Frank Kimball, the major proprietor of National City, went East in 1880 to see if there was anything to be done with the nearly dead Texas and Pacific Railroad scheme and to follow up a lead opened the year before—the Santa Fe. The news from San Diego followed him: E. W. Morse wrote, "The people are leaving every day and soon all will be gone who can get away."



The resourceful Kimball badgered the Santa Fe-Atlantic & Pacific Railroad combine (which at the moment seemed checkmated in its search for a tidewater U. S. Pacific Coast terminus by the Southern Pacific) into building to San Diego (precisely, National City) in exchange for 17,000 acres of the local sagebrush, half a hundred town lots, and $25,000 cash. Kimball later had reason to believe that the Bostonians had got the better of him, but a balanced judgment of the results of his deal leaves the issue in doubt, and it would not be hard to argue that the San Diego region was much the winner. The road was to run about due north from San Diego to join the main line at Barstow. The first spade of earth was turned on December 20, 1880, and by July of '81 the first train steamed north from National City into San Diego.

It was November 9, 1885, before the first through train from the East came over the tracks to San Diego, but in the meantime the boom had been developing. While the California Southern Railroad (as the Santa Fe subsidiary was known) was building, San Diego began to gather momentum. In 1881 the city chartered a gas company; in 1882 the town got telephones; in 1883 Helen Hunt Jackson was abroad in the district researching *Ramona*; in 1884 W. W. Bowers opened a worthy rival to Horton House with The Florence, which advertised itself as

"really the most exclusive, and the most tony hotel in the city. . . ." In 1886 San Diego joined the most up-to-the-minute cities in the nation in chartering an electric light company. This dubious civic improvement consisted of a series of 110-foot masts surmounted by clusters of a half-dozen arc lamps; fortunately the city treasurer had them doused at midnight, and in later years whenever the moon looked bright.

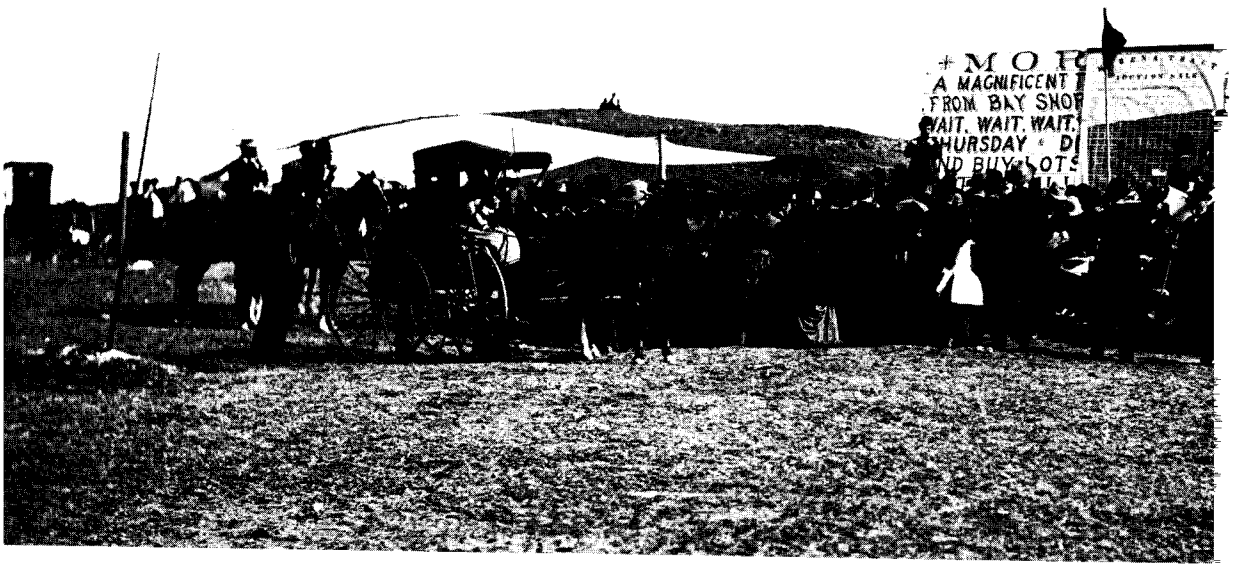
The picture above looks southwest from the tower of the Pierce-Morse Building at 6th and F Streets. Morse had been one of Alonzo Horton's first converts to the vision of a new San Diego. Now, in the first flush of the big boom, he erected the first really big-city building, a five-story structure that looked a bit like a small version of "Lucky" Baldwin's famous hotel and theater in San Francisco.

The San Diego boom rode the crest of the nineteenth century's wave of technology. Cheap transportation, cheap building materials, instant communication, mass publicity all made possible startling changes in a comparatively quiet place like San Diego, a place which did not seem to have the obvious potential of areas that had previously experienced the more traditional farming or mineral booms. The wedding of publicity and technology is seen (among other places) in the very existence of the photographs on these pages; by the middle 1880's it was possible for an American photographer to pick up his equipment and go out and record everything in sight. John Alexander Sherriff, who is responsible for all of these images of boomtown San Diego, did just this.

Sherriff was from Canada, and had come to San Francisco, where he worked in a photographer's studio, in 1865. He came to San Diego in the doldrum year of 1876, where he set himself up in business by purchasing the studio of C. P. Fessenden. He had already bought San Diego land during the little boom of the early '70's; by 1886, when he was 58 years old, he was thoroughly prepared to profit from the boom as well as to record it. That he did profit considerably is suggested by his sale of the photographic business in 1887. However, the shop would not stay sold, and Sherriff kept taking it back from a series of impecunious buyers. In 1896 (by which time Sherriff listed his occupation

as "capitalist" in the city directory) Herbert Fitch took over the studio and collection. All of the Fitch photographs, including the glass negatives made by Sherriff, were in 1947 purchased by The Union Title and Trust Company (now The Title Insurance and Trust Company of San Diego).

At the right is a portrait of Sherriff, made in his studio around 1880. The other two photos show a couple of the businessmen who on the eve of the boom paid Sherriff for a portrait.



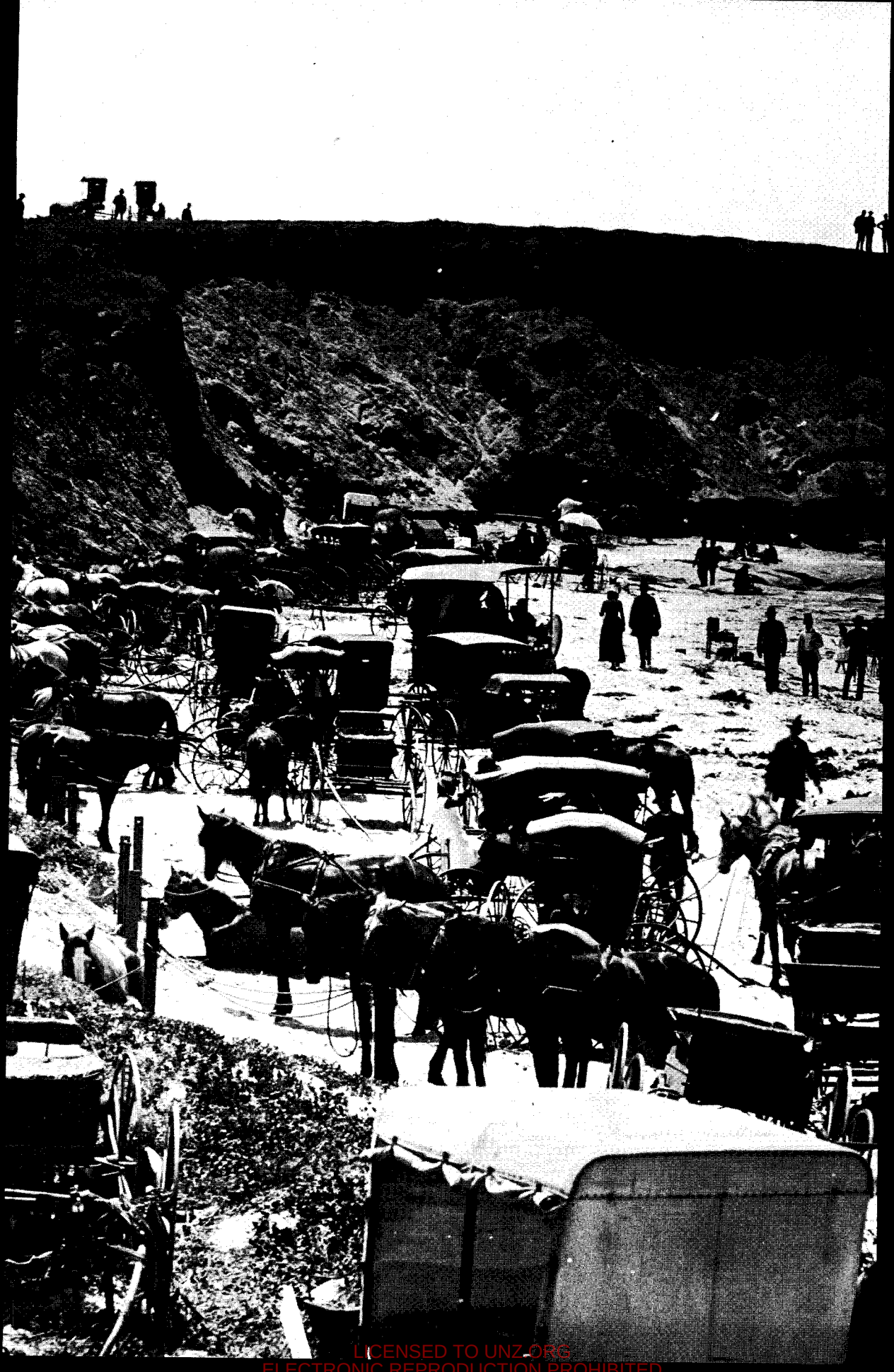
At the height of the boom, in 1887, a real estate ad suggested, "We may say that San Diego has a population of 150,000, only they are not all here yet." Sometimes it seemed that they were. It was observed by reflective boom-watchers that by no means all the buyers of new and choice lots were greenhorns fresh off the Santa Fe; rather, old hands bought in again after they realized that their first "killings" had been mean trades.

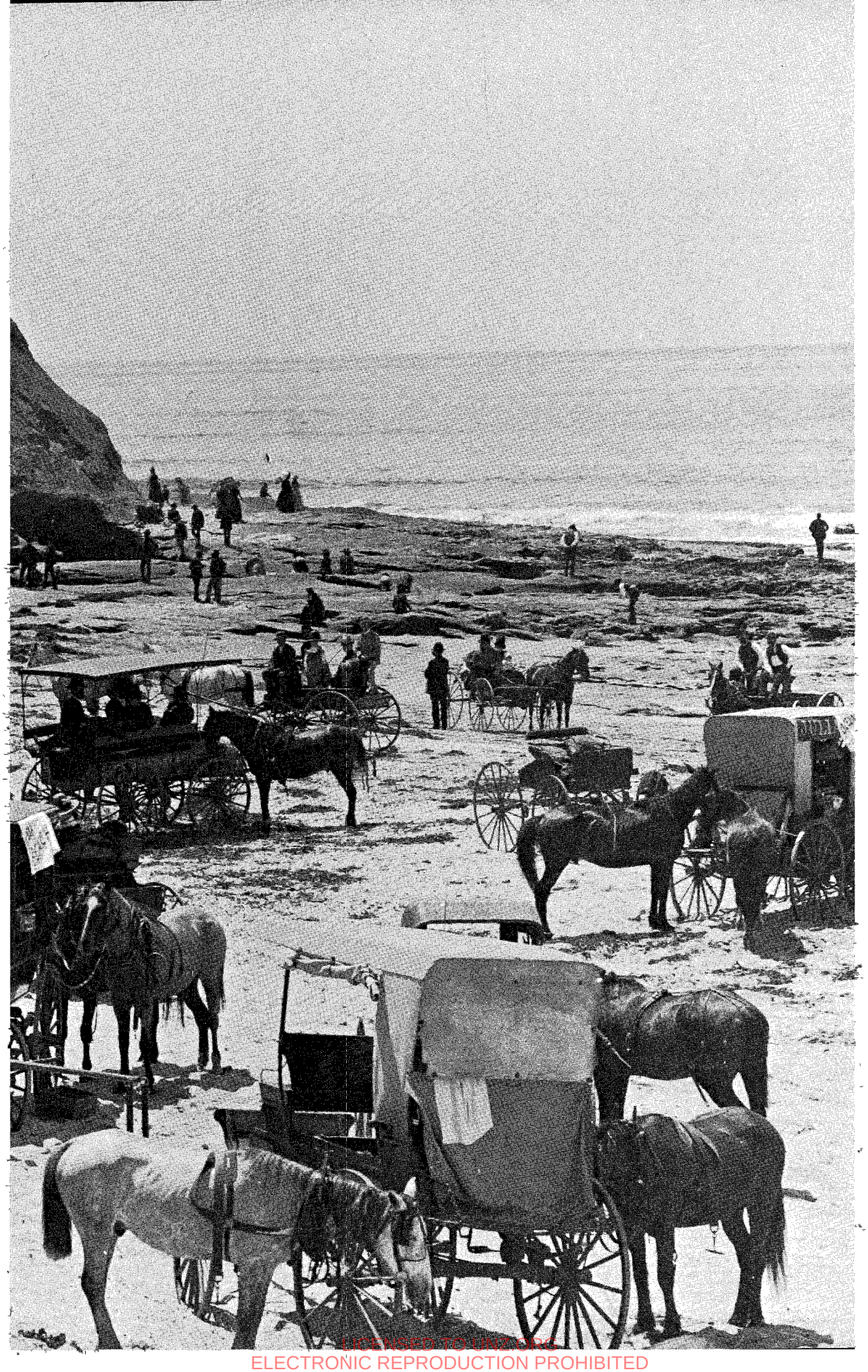
When no one could lose by buying, the art of selling was a matter of drawing a crowd. A big barbeque was a standard crowd pleaser. Free transportation for a grand outing was enough in itself to bring out families in an age when most people walked to where they were going. A band of music stirred the spirits—and finally there was the even more stirring music of the auctioneer selling passports to the future. . . .

At the left is a sale at Morena, "A Magnificent Tract . . . From Bay Shore to Mesa," in December, 1887. The bay referred to was False Bay, which became Mission Bay as the result of a contest won by poetess Rose Hartwick Thorpe:

> Beyond the bay the city lies
> White-walled beneath the azure skies,
> So far remote, no sounds of it
> Across the peaceful waters flit—
> Fair Mission Bay
> Now blue, now gray,
> Now flushed by sunset's afterglow.

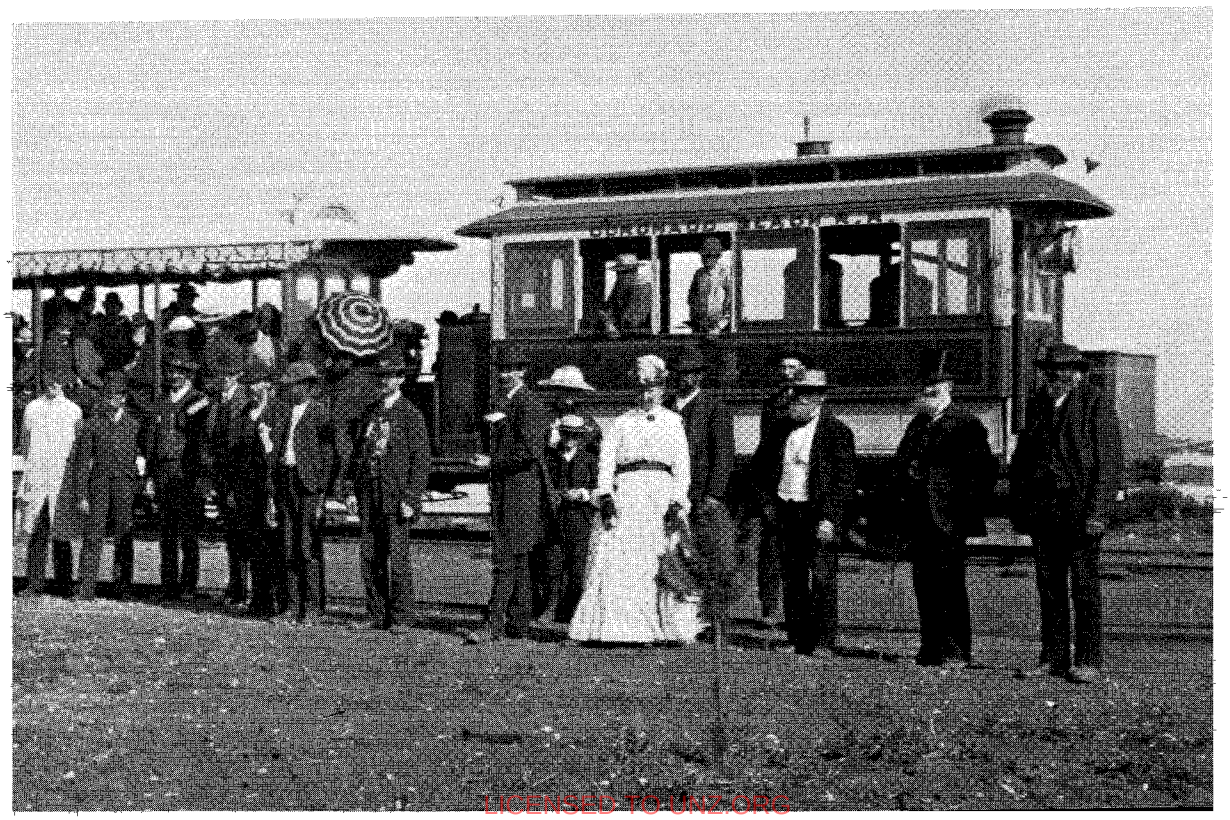
Overleaf is the Sunday crowd at Ocean Beach, probably at the maiden lot sale and mussel roast of April 24, 1887. A thousand people turned out and 22-year-old promoter Billy Carlson sold 2500 lots.



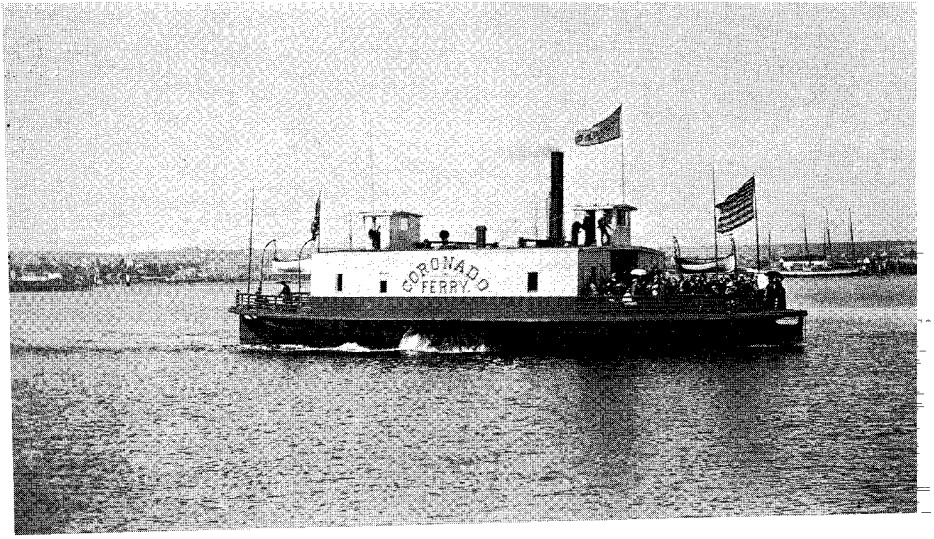


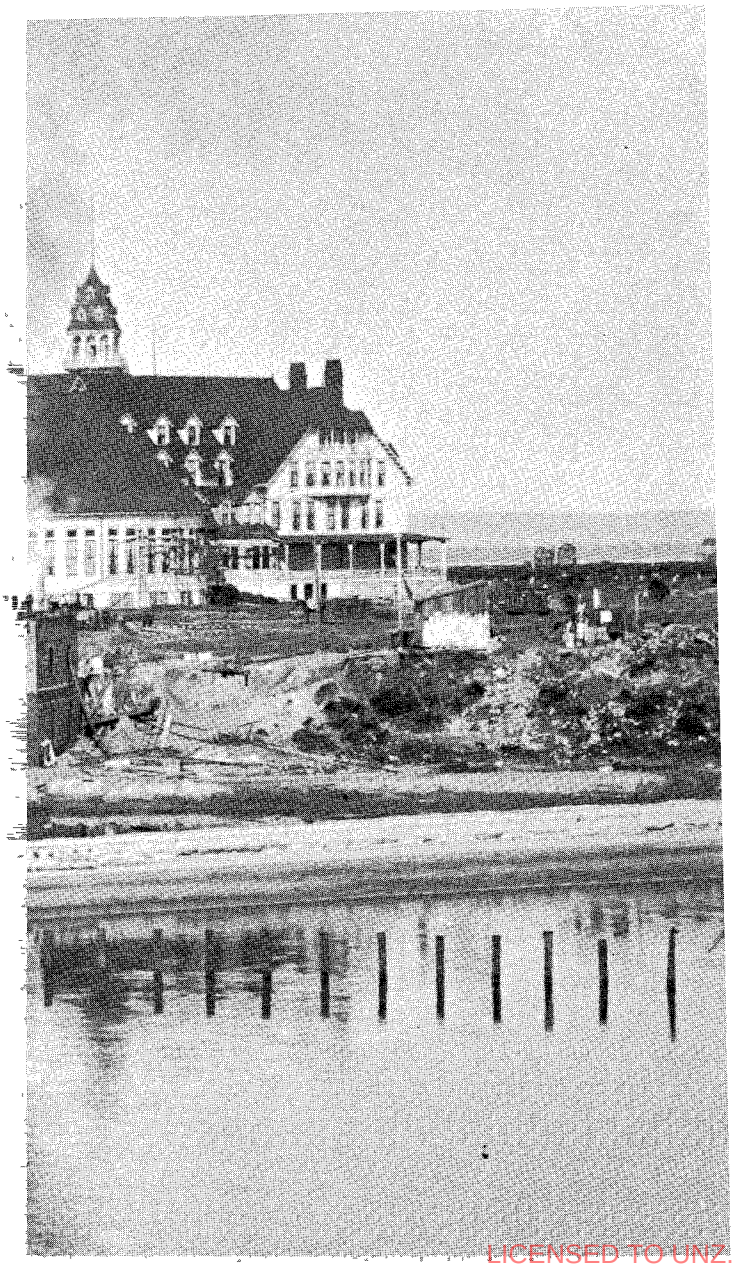
The greatest single promotion of the boom years was the subdivision of Coronado Island and the construction of the Hotel del Coronado, an edifice beside which the standard "first class resort hotels" of Southern California's real estate boomers appeared as second class boarding houses. Two Midwesterner health seekers of financial substance, Elisha S. Babcock and H. L. Story (seen on the beach with Alonzo Horton), are said to have gotten the idea of the island development and hotel while hunting rabbits there. They bought all of what is now Coronado and North Island in December of 1885 at the boom-inflated price of $110,000, incorporated the Coronado Beach Company, and quickly peddled over a million dollars worth of lots. Below, the Coronado Beach Railroad, which carried sightseers and prospective settlers from the ferry landing, pauses on Orange Avenue while passengers contemplate the cameraman and the lonesome little pine seedlings.

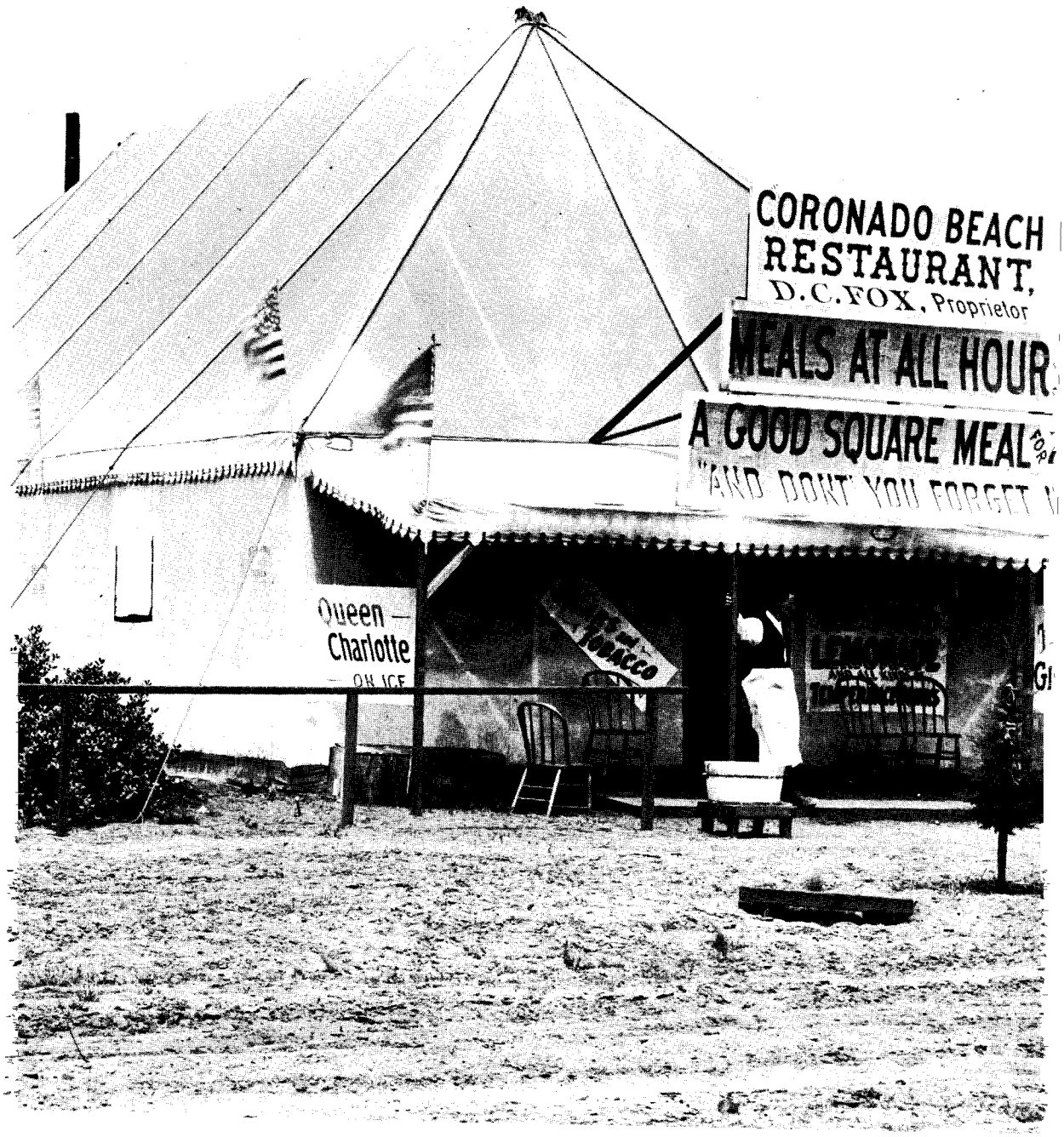
Above, desert Coronado waits to bloom.

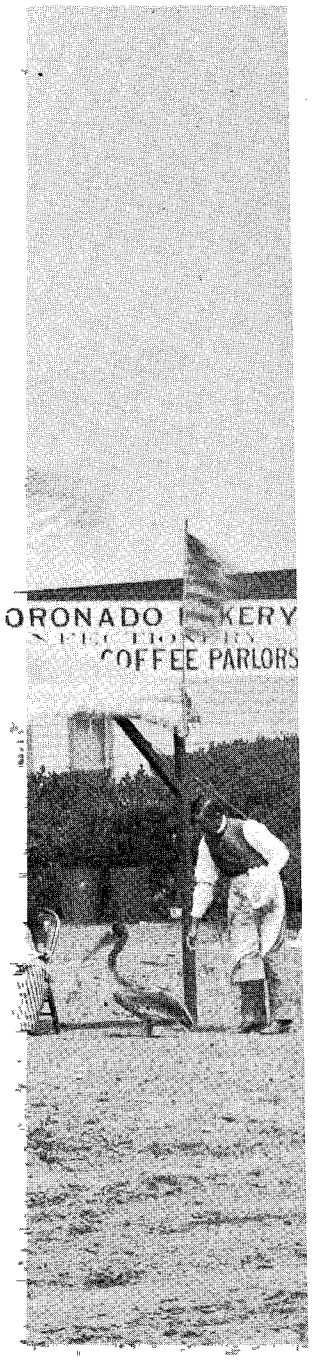


The key to making Coronado "the best advertised property in the United States" was the hotel. Babcock gave free rein to the fancies of Evansville architects James and Merritt Reid. One of the Reid Brothers' draftsmen later recalled, "The hotel never did seem to stop growing. . . ." It wound up in January, 1888, with 399 rooms (most with fireplace and wall safe). In the dining room, not a single pillar obstructed the view that a thousand guests might have of one another. The army of workmen who built the redwood palace included several hundred Chinese imported from San Francisco, while Boston supplied the hotel staff for the establishment. The official grand opening was on Valentine's Day, 1888—perhaps as good a day as any to identify as the peak, and last gasp, of the big boom.





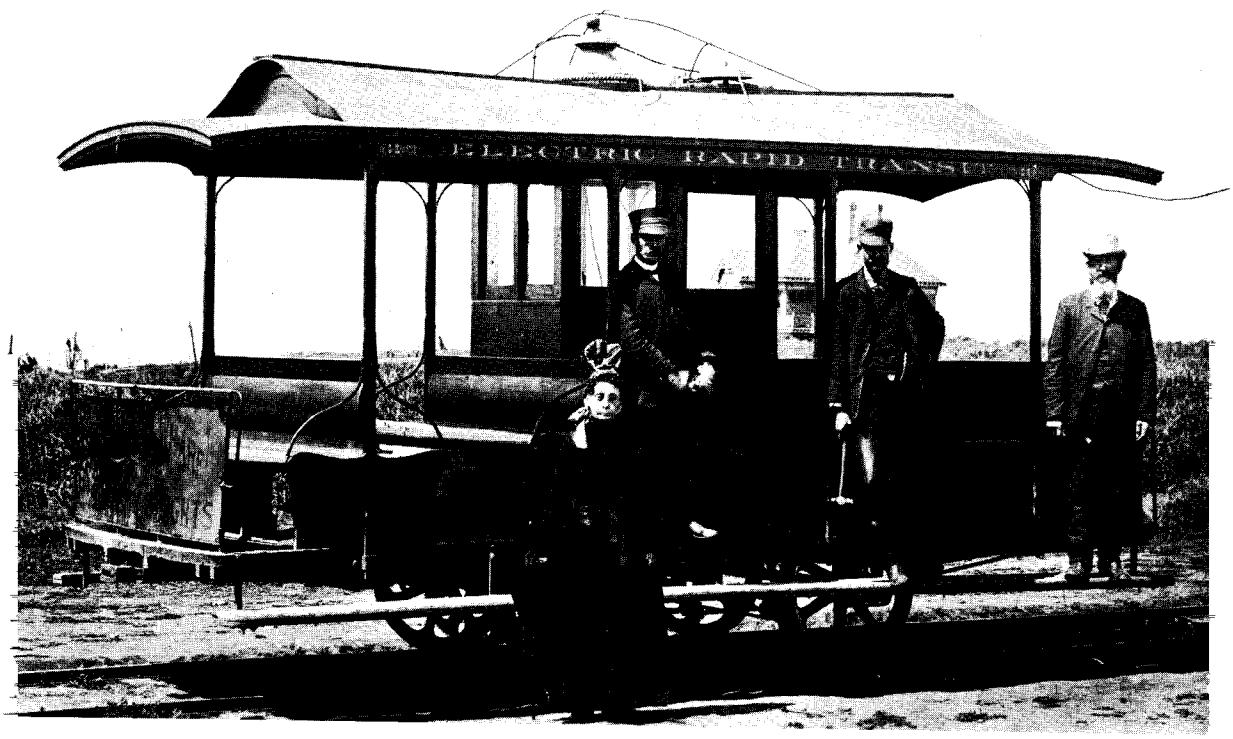




It is perhaps impossible to separate many of the elements of the boom: publicity brought investors, investment created publicity; the railroad facilitated immigration, increased traffic brought down prices. A struggle between S. P. and Santa Fe to control trade resulted in a rate war that all but removed the expense of coming to Southern California. The $150 fare from Chicago and St. Louis came down—and then plummeted. On March 6, 1887, fares opened at $12, dropped to $6, then to $4, and by noon stood at one round dollar for the trip to paradise; throughout most of the rest of the year the fare hung around $25.

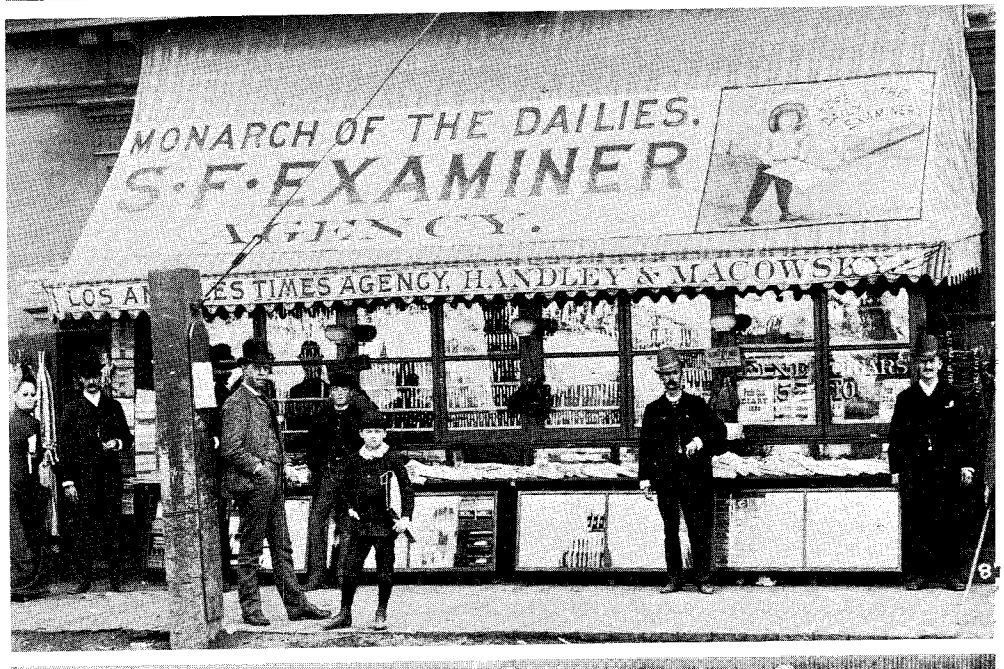
The June trains brought 4,755 people to San Diego and the pace jumped to over 5,000 per month through September. The population reached 35,000 and edged toward 40,000—though it is uncertain just what constituted a "population" when more than that *arrived* in a single year. A thousand ships berthed in San Diego during 1887. The price of the kind of business lots that Horton used to give away for civic improvement soared to $2500 a front foot. By late 1887 it was not unusual for $200,000 worth of real estate to change hands in a day. During the year property valuation rose from $4,582,213 to $13,182,171 and by 1888 city and county assessments together went to $40,000,000.

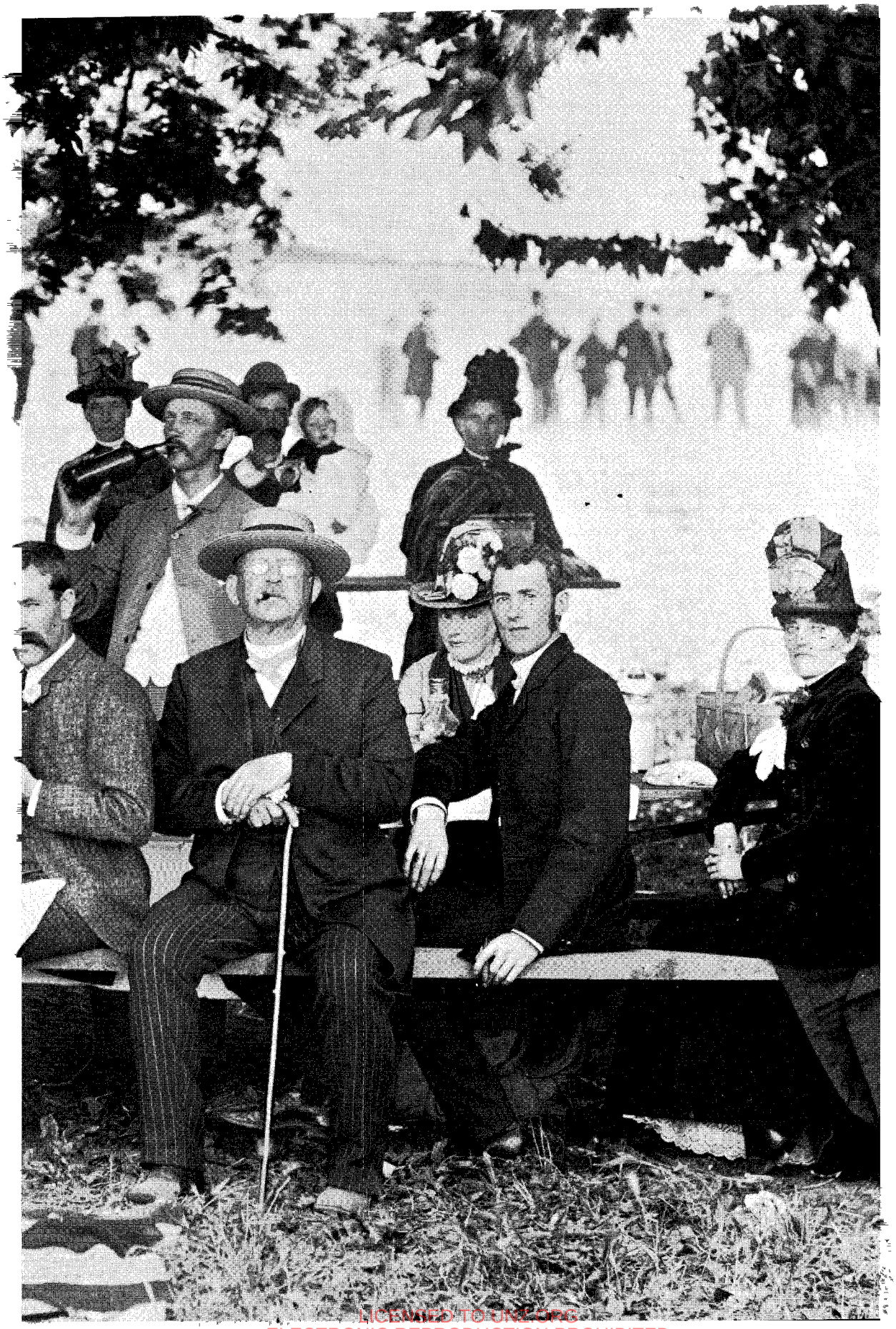
Anything seemed not only possible but attainable. With a million-dollar hotel rising at the other end of the track, what reason was there for the proprietor of the Coronado Beach Restaurant to disbelieve that his establishment would soon be one of the celebrated dining rooms of America?



Perhaps the surest sign that boomtown San Diego had really achieved city status was not in population or buildings but in that civic symbol of the '80's, public transportation or "traction." San Diego, with subdivisions opening up on all sides, soon boasted a network of horsecars, "motors" (steam dummies with passenger cars), cable cars, and even electrics. San Francisco had no electric cars. The electric line from the Pacific Coast Steamship wharf to University Heights (where a College of Fine Arts was promised), was a wonderful example of progressive investment, though it was not noted for its reliability.

At the right are signs of good times. It is much to be doubted that San Francisco could boast a sidewalk shoeshine stand to compare with Dugan's Marble Palace. An elegant newsstand might not seem significant—until one reflects that it is a city on the move that wants to know everything that happens, and right now. And "Agricultural Implements" meant a great deal, too—for the rapid development of "the backcountry" was the real foundation of the future.



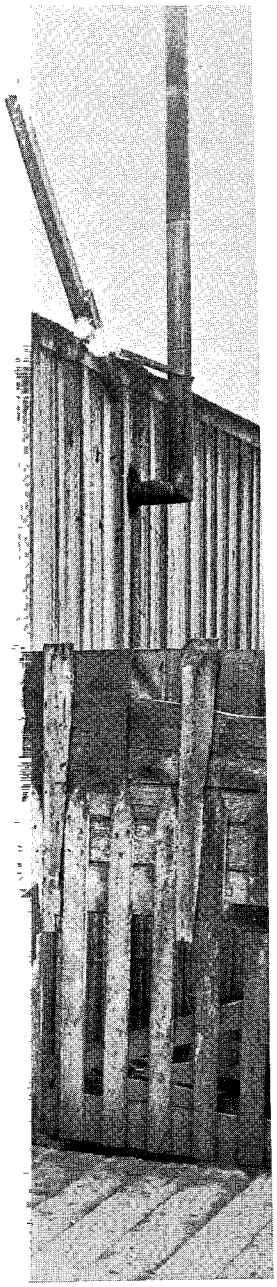


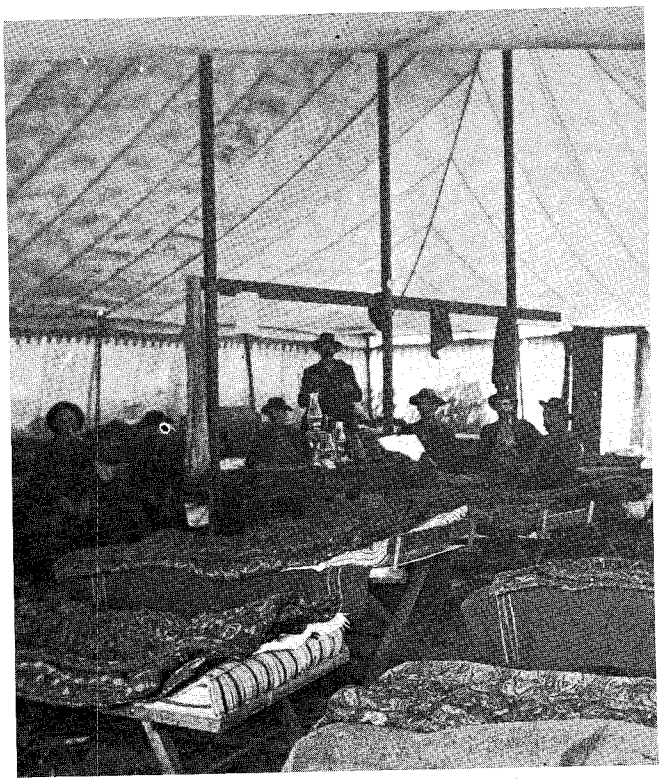
San Diegans . Picnicking in large groups (preceding pages) was a favorite family entertainment in San Diego, as in other communities in Victorian America. And more characteristic boomtown entertainments could be found in a profusion that was dismaying to some church-going folk. Elizabeth MacPhail (in *The Story of New San Diego*) records that there were at the height of the boom 64 grocery stores, 71 saloons, and in the Stingaree district perhaps 120 houses of the sort that did not advertise themselves in the city directories. Gambling, too, was wide open; Wyatt Earp announced himself in the city directory as "capitalist," but he was more familiarly known as a referee at prizefights and as proprietor of three gambling dens. While Earp avoided displaying his most notorious abilities during his San Diego appearance, shootings were no news in the Stingaree. The Last Frontier coincided with the age of the derby hat and the two-dollar pocket pistol.

Below (left) are the town dudes, the founders of the Cuyumaca Club, still a leading San Diego social institution. The school class would be one of the last to learn its ABC's in "the little pink schoolhouse"; in 1888 the impressive B Street School went up on the site, giving San Diego education a properly metropolitan look.

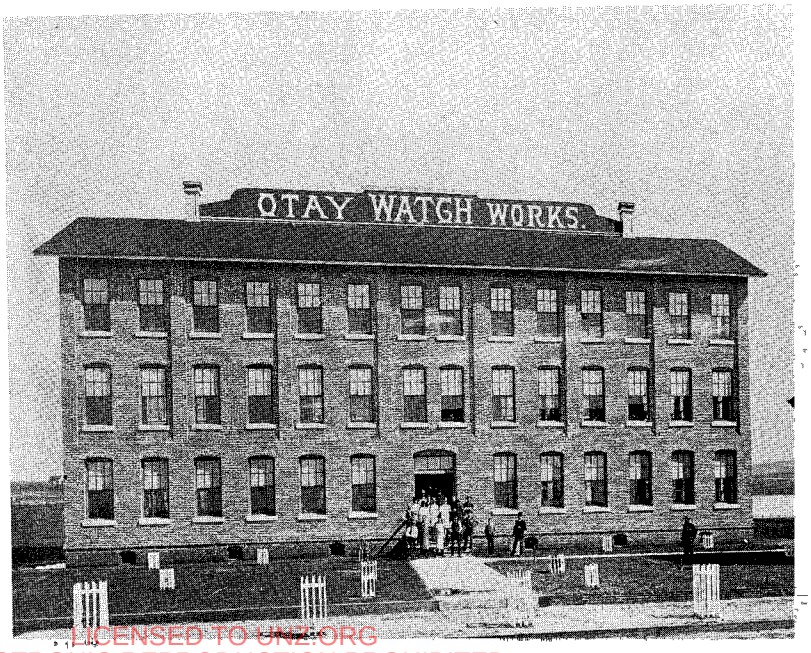
"The Hole in the Wall" saloon, featuring Tom and Jerry night and day and a grocery improbably combined with a tailor shop form a sharply detailed vignette of San Diego in its plank sidewalk days. The poster in the window announces the appearance of E. J. Bishop ("A Laugh in Every Line") at Leach's Opera House, successor to Horton's Hall as the leading theater.

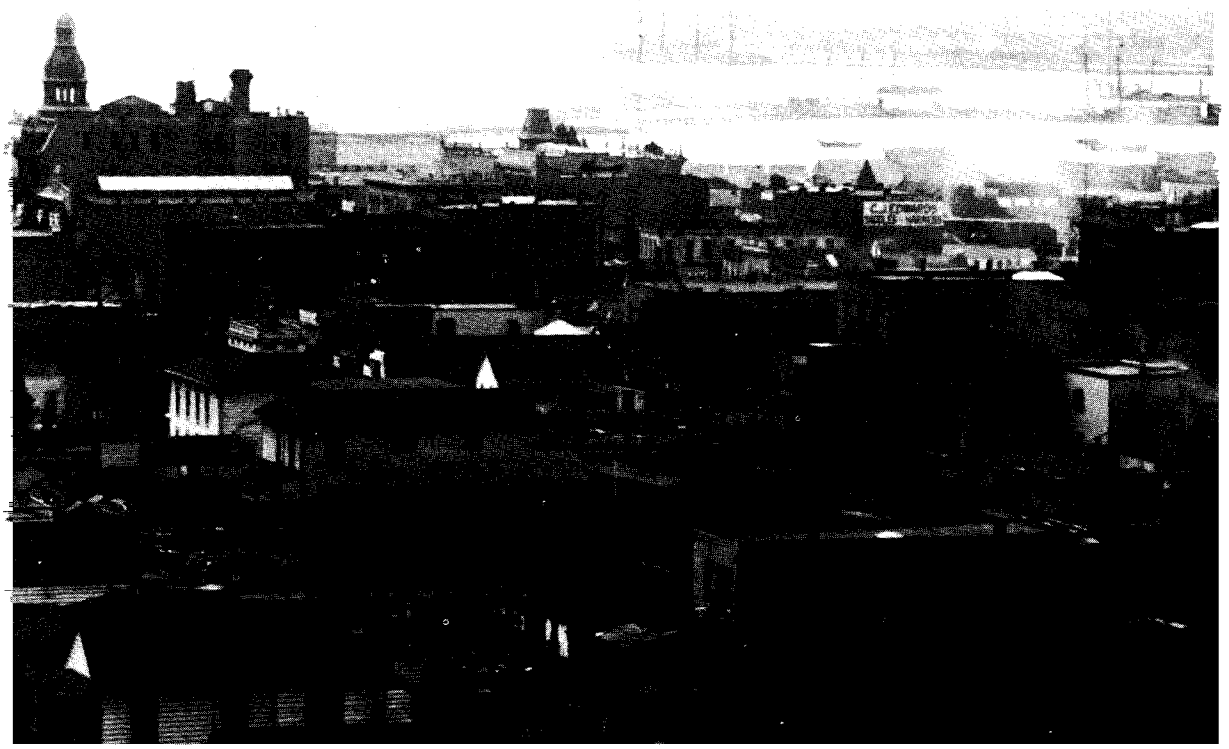
As another improbable contrast we see the watchworks promoted by Frank Kimball in the wilds of Otay, complete with cement sidewalk and assembled technicians. The Otay Watch Works did make some watches—though few enough to make those extant real collectors items.





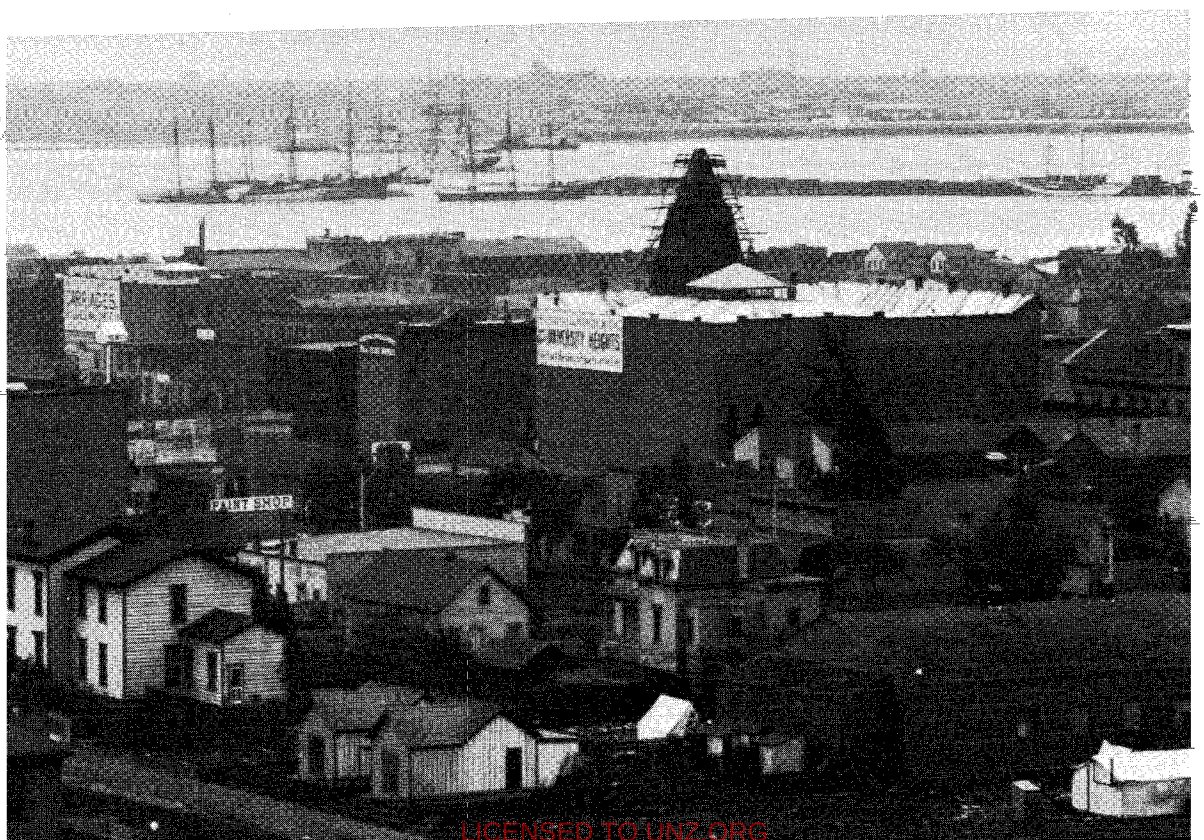
The meaning of "flea bag" is visually defined in the view of a tent hotel. Though San Diego in 1887 could accommodate perhaps 2000 in its hotels and boarding houses, latecomers had to settle for anything.





The Fourth of July, 1888 . Looking north on Fifth Street from E one can see that the boom has built a city. Yet by the Glorious Fourth of '88, joy was in unusually short supply in San Diego. Thomas J. Hayes, one of the 235 real estate agents listed in 1888, recalled the times had changed somewhere in the spring of that year: "I remember that one day we had a big rain, and after it was over I went downtown. The streets that had been jammed with people . . . seemed to lack something. The bottom had dropped out of the boom. From whence the boom came I do not know. . . . It stopped more suddenly by far than it came. It reversed motion and went down like a chunk of sawed-off wood."

Yet the big boom left a city where there had been only Horton's town. Though the population dropped in six months' time from around 35,000 to about 16,000, even the reduced population was six times what it had been in 1880. San Diego was a branch line town of the Santa Fe rather than the Gateway to the Orient—but it *was* a city.



When boom days had passed Water was as important to San Diego as cheap rail fares, for here was a desert place where brackish wells could hardly meet the demands of a thriving city. The San Diego Flume Company was organized to meet the challenge in 1886, but it was many months after the collapse of the boom when the first water came down the thirty-five miles of flume from Lake Cuyamaca. The importance of this occasion is documented in the photo at the left; here Governor Robert Waterman and Mayor D. C. Reed share the front bench in the first boat to shoot the flume, February 22, 1889. (The ride is said to have been more spectacular than planned.)

Below is a gag shot of Sherriff's suggestive of the desperate humor of post-boom days. The sign is dated December 2, 1888—by which time there was indeed no life in the boom.

If the bust was as dramatic as the boom, it is still important to consider what really was lost. True, millionaires of a day were back where they had started, as was the speculator so thoroughly cleaned out in the crash that even $500 in hard money had followed his paper millions down the drain. Yet real gains had been made in spite of paper losses. San Diego was all "For Sale"—but there was now something tangible to sell. If the price was low, it was at least a price. When such bubbles as the Coronado Island and hotel promotion burst, there was a John D. Spreckels to pick up the pieces and carry the fortunes of San Diego on to the destiny that Alonzo Horton had dreamed.

The assistance of Mr. James S. Copley and Copley Books in publishing this work is gratefully acknowledged. All photographs courtesy of the Title Insurance and Trust Company of San Diego.

Paul Gates

Professor of History at Cornell University and a leading expert on the history of public domain.

The California Land Act of 1851

THE CALIFORNIA LAND ACT of March 3, 1851, seemed to mark the final step in transferring to the courts full responsibility for adjudicating claims to land granted by foreign governments in territory later acquired by the United States. It was framed by members of Congress who were familiar with the errors of the past in the adjudication of land claims in Missouri, Illinois, Louisiana, and Florida, particularly the use of influence at various government levels to secure confirmation of doubtful or incomplete grants, and with the crushing burden Congress had carried in considering the thousands of private land claims presented to it. The growing complexity of public affairs and the increasing tendency of Congress to intrude into matters of transportation, education, overseas shipping, rivers and harbors improvements, agriculture, and industry were absorbing the time of members of Congress who could no longer give the detailed attention of the past to private land claims or to the great number of private financial claims that were deluging it.

The California Land Act of 1851, and a similar measure passed in 1855 to transfer to the newly established Court of Claims responsibility for passing upon the many claims growing out of government activities, were both products of conservative coalitions of Whigs and Democrats and were intended to free Congress of the minutia that had absorbed an unconscionable amount of attention by members.[1] Neither bill was a partisan measure nor was the Land Act by any stretch of the imagination an agrarian measure. Unlike so much of the land legislation of the time, it contained no loopholes through which stultification of its provisions could be achieved. Yet this same Act has been the object of more misunderstanding by contemporaries and by historians than almost any legislation affecting public lands. This early distortion was doubtless somewhat responsible for the partial withdrawal by Congress from its transfer of authority to the courts by the enactment of eleven special interest measures which in turn led to intensive lobbying in Washington for numerous other private acts of a similar character.[2]

In the easygoing days of Mexican California tracts had been granted for cattle ranchos ranging from 4,428 to 133,000 acres, and small residence lots were assigned in what became San Gabriel, San Francisco, and San Jose. The

process of conveying public lands was speeded up after the adoption of the secularization law of 1833 and the recovery of the mission lands. In the last three years of Mexican control 288 grants were made. Among the persons most favored with numerous grants were members of the Abila, Bernal, Carrillo, Castro, de la Guerra, Higuero, Pacheco, Peralta, Pico, Sánchez, and Vallejo families

Just before American control was established, the basis was laid for numerous fraudulent claims; other claims were rushed through before the usual requirements to make them legal could be satisfied. In the last seven months of his service as governor, Pío Pico hastily approved 56 "eleventh hour" grants of one league or more totalling 1,756,000 acres.[3] Under Mexican law most of these grants were not complete titles and could be denounced and made invalid because they had not been approved by the assembly, had not been improved and made into operating ranchos, or had been conveyed to others. When California was transferred to the United States by the treaty of Guadalupe Hidalgo, residents were allowed to become American citizens or to retain their Mexican citizenship. In either event they were promised that property of every kind "shall be inviolably respected . . . exactly as if the same belonged to citizens of the United States."[4]

Mexican rights were to be interpreted according to Mexican law, not American, and questions of title in equity proceedings were to be judged by Anglo-Saxon law as interpreted by courts holding property rights in the highest regard. No additional rights were to be created in the judicial process but neither were any rights to be diminished.[5]

American control of California and the discovery of gold created a demand for land, the most desirable of which was in private land claims in the coastal valleys and along the San Joaquin and Sacramento Rivers. Containing nearly 15,000,000 acres, these claims had been scarcely saleable prior to 1846, bringing at the most only a few cents an acre. Now, with the inrush of population, the need for land for crops and for cities, and the likelihood of swiftly rising prices, there was a scramble for land that sent prices to levels that promised large returns to speculators. Efforts were made to provide documentation for incomplete claims, new claims were fabricated, and occupancy concessions were transformed into full possessory claims by the alchemy of sworn testimony. Only by the most intensive investigation of the handwriting, the seals, the quality of the ink and paper on which concessions were made, and the closest examination of the parole testimony was it possible to separate the most cunningly contrived claims from those which were valid.

It was desirable that early action be taken to examine the title of the grants claimed to have been made by the Spanish and Mexican governments in California to segregate them from the public land, that the latter might be opened to settlers. Not one of the land claims had been surveyed, and in most instances boundaries were entirely non-existent. Unfortunately, other ques-

tions intervened, including the admission of California into the Union, the status of slavery in the territory acquired from Mexico, the slave trade in the District of Columbia, the recovery of fugitive slaves in the North, railroad land grants, and the donation of swamp lands to the state. These questions all had higher priority, and, until the Compromise of 1850 was finally achieved, the California land claims had to wait. Nearly five years passed after California was conquered, and three years elapsed after it became a part of the United States, before Congress got around to providing for the adjudication of the land claims. By that time almost a hundred thousand people were roaming over California looking for gold or for land on which to settle. During this long delay the government archives of California were open to interference and falsification by the insertation of antedated documents and tampering with previously filed documents.

The usual procedure for testing claims of land granted by predecessor governments in areas previously acquired by the United States had been to establish boards of land commissioners to pass upon the documentation and verbal testimony presented in support of the claims. Final authority for confirmation or rejection rested with Congress. Owners of questionable or borderline claims were sometimes permitted by Congress to take their cases to the district court with a right of appeal to the Supreme Court. Before 1851 Congress had been burdened with a staggering load of cases. Finding it impossible to give individual attention to 27,000 claims, Congress had resorted to blanket confirmation of claims of 640 acres or less that had been favorably reported by the boards, and later even claims of 1,000 acres, without itself giving any serious consideration to them. It had been the practice, however, to refer the larger claims, and there were many of them, to the Senate and House Committees on Private Land Claims for reports before they came up for confirmation or rejection. These committees had to spend countless hours sifting through the documents and the testimony and had to resist the demands of the attorneys and the unconscionable lobbyists representing the claimants. On occasion Congress defaulted by arbitrarily confirming complete lists approved by the boards; at other times it was quite selective, picking out claims it deemed sound or which had strong political backing. Rejection, however, rarely settled anything for the claimants, especially those claiming one or more square leagues (4,428 acres); they came back, session after session, aided by the ablest lawyers in the country, and lobbied persistently for confirmation. Under this pressure by lawyers, who were often past and even present members of Congress, the committees gave way. For example, a series of questionable Missouri claims that had been rejected over and over again by the boards and by Congress (the last occasion being in 1836), was confirmed in 1858. Congress reversed itself, confirming ten claims for 110,000 acres along with a number of lesser claims, on no more evidence than it had had available earlier.[6]

In the course of handling these thousands of land claims up to 1851 (many were not finally settled for another generation) Congress adopted 138 measures prescribing forms of procedure for the boards, ratifying or rejecting their recommendations, and passed 143 special acts confirming individual claims approved by the boards, either rejecting the negative action of the boards and confirming individual claims or authorizing new trials in the district courts. The whole process was an exhausting one, taking up time that might better have been given to more important measures.[7] By 1851 experience had shown the advisability of placing the burden of adjudication on the courts rather than on Congress.

The California Land Act of 1851, therefore, marked a major step forward in the adjudication of land claims, for it placed full authority for their final determination in the courts. A Commission of three members appointed by the president was to hear testimony and to study the documents presented by the claimants, and a law agent "skilled in the Spanish and English languages . . . and learned in the law" was to "superintend [*i.e.*, defend] the interests of the United States in the premises. . . ." After due deliberation the Commission was to confirm or reject the claims.[8] From the decision of the Commission either side could appeal to the district court. Here new evidence could be presented, and the district attorney could contest the Commission's decision if he doubted the authenticity of documents presented, the integrity of the witnesses, or the interpretation of Spanish and Mexican law. If the district attorney was completely satisfied, he could recommend approval of the decisions of the Land Commission or the district court favorable to the claimants and litigation concerning ownership would then halt. Both the government and the claimants had the right of appeal from the decision of the district judge to the Supreme Court, though no new evidence was to be submitted there.

A factor seriously delaying the final settlement of many claims was the careless manner in which owners had handled their titles. Frequently the papers had been lost or destroyed, all requirements for a complete title under Mexican law had not been completed, or claimants delayed in submitting their claims and then they tried to change their original but vaguely defined boundaries to include valuable improvements made by later settlers. Many claims were so devoid of improvements or signs of ownership that immigrants swept over them, selecting sites and building homes without any knowledge that they were on private claims. It was to take years before the last claims were confirmed. By that time some owners or their heirs either had lost their rights through tax delinquency, mortgage foreclosures, or intra-family litigation, or the titles had been fragmented into so many parts as to make division and sale of the land difficult.

With much of the most promising arable land in California included within claims scarcely touched by the hand of man or by his cattle, it be-

hooved the government to appoint men to serve on the Land Commission, as district judges, as government law agents, and as district attorneys who were competent lawyers and who would proceed promptly to California and press forward expeditiously the tremendous task of adjudicating the claims. Unfortunately, all these offices were a part of the patronage system and the quality and integrity of the appointees was not always the highest. Two appointees as district attorneys, Pacificus Ord and Volney Howard, were careless in defending the government title and in at least two instances each acquired an interest in a claim which their duties had recently compelled them to oppose. Judge I. S. K. Ogier in the Southern District was said to be careless about cases, letting them slip by for confirmation without giving them the careful scrutiny that Ogden Hoffman did in the Northern District.[9] Although all Federal officials in California were paid higher salaries than similar officials in the older states, their income was low compared with those of attorneys drawing fees for representing the claimants. The temptation was great to resign and work with the claimants, and consequently there was a heavy turnover among those holding legal positions. Furthermore, the burden of preparing for the government defense in 813 cases was extraordinarily heavy and perhaps lapses could hardly be avoided. It was only with the emergence of the dangerous Limantour, Bolton, and Palmer claims to much of San Francisco that Congress was induced to make a generous appropriation to send Edwin M. Stanton to provide the defense equal to the best legal aid the attorneys for the claimants were showing.

The heaviest part of the adjudication process had to be done by the court of first instance, the Land Commission. It had to evaluate the original documents in the possession of the grantees and to determine whether they coincided with or were in conflict with those in the archives of the government. It also had to take testimony of witnesses to signatures of officials, and to occupation and improvement of the ranchos, to hear the arguments of the attorneys of the claimants and of the government law agent, and to render a decision knowing that appeals might be taken to two higher courts. The three years (later five) in which the commissioners were to hear the evidence and make their decisions were not quite that long, for the time required for the two sets of commissioners to make the journey from the east coast to San Francisco has to be deducted.[10]

Hiland Hall, chairman of the Land Commission, was a Vermont Whig who had gained some experience while in the House of Representatives as chairman of a special House Committee to investigate Revolutionary Land Claims presented by Virginians which he found not deserving of further remedial legislation.[11] Hall had been friendly with Millard Fillmore since they served together in the House and was appointed by Fillmore in 1851 Second Comptroller of the Treasury and shortly after was made chairman of the Land Commission. He took with him to California two of his sons as

clerks of the Commission, one of whom died of the "Panama Fever" on his arrival. Harry I. Thornton, the second member of the Commission, had moved from Virginia to Alabama where he became a judge of the supreme court, a member of the Senate, and a supporter of Henry Clay.[12] He may have gained some knowledge of the 448 private land claims Alabamians presented for confirmation, but I have found no evidence that either he or Hiland Hall were familiar with Mexican land law or with the Spanish language. Judge Solomon Heydenfeldt of the state supreme court was quoted in 1852 as saying that Thornton "is a high toned gentleman" and a liberal minded man and "all right," presumably on the claim question.[13] The third member, James Wilson of New Hampshire, had been in his second term in the House of Representatives in 1850 when he announced his resignation as he was "about to depart for the State of California."[14] He had served as surveyor general for the territory of Iowa from 1841-1845 where he doubtless had familiarized himself with the public land laws and must have learned about the claim of Julian Dubuque for more than 100,000 acres, including the lead bearing land along the Mississippi, and the efforts of the Chouteau family to gain confirmation of it. With a year or more of residence in California when he was appointed to the Commission, he surely had acquired considerable information about the claims, since much of the practice of lawyers at that time revolved around them. However, he was to serve for less than a year before Congress, on a nearly straight party division, rejected his nomination on August 31, possibly because of an anti-slavery speech he had made.[15] The other two Whig appointees were permitted to serve for little more than a year before they were dismissed.

Ignorance of Spanish land law was bad enough, but unfamiliarity with the Spanish language was even worse, and this applied to both Whig commissioners and the Democrats who succeeded them. As a later Surveyor General of California was to say out of the experience he had gained in trying to make up for numerous errors of the commissioners in setting boundaries for the claims: "They were dependent upon such translations as they could obtain of the original title-papers and upon the oral testimony of witnesses produced in support of the same, which oral testimony had to be taken through the media of interpreters. The translations of the original title-papers were generally crude and often positively incorrect, and the correctness of the oral testimony depended on the skill and honesty of the interpreters employed to translate the same." At this late time, 1875, he concluded that their efforts to determine the boundaries had "resulted in interminable conflicts and confusion . . . in the . . . survey of the tracts . . . which are now producing, and will for years to come produce . . . expensive and ruinous litigation."[16]

The Whig members of the Commission did not work in complete harmony. Thornton seems to have favored easy and swift confirmation of the

claims and opposed allowing adverse claimants to intervene in the original cases. Hall and Wilson favored allowing adverse parties to intervene, seemed to be somewhat stricter in requiring documentary evidence of the grants, confirmation by the assembly, and testimony on the degree of occupancy. Hall was troubled at Thornton's insistence on delivering long minority decisions, and spoke of the "ignorance, the obstinacy and the absurdity of Judge Thornton," while praising General Wilson as "a first rate man." When Gustavus Henry, an intimate friend of Thornton, was appointed to replace Wilson, Thornton was delighted as he would swing the balance of the Commission toward his own point of view. Thornton was held by the *San Francisco Herald* to be responsible for the "soundness" of the decisions, while law agent George W. Cooley was censured for his "disgraceful attitude." Thornton, more than the other commissioners, was aware that the victory of Pierce in the election of 1853 was sure to be followed by the displacement of the Whig members and that the deadline for filing claims was approaching. He urged the "grave necessity" of claimants pressing forward their claims.[17]

Senator John B. Weller of California gave a partisan judgment of the three Whig members of the Commission which should perhaps be somewhat discounted. "They know nothing of the Spanish language. I admit they ought to know it. I believe further, that none of the three land commissioners know anything of the civil law, unless they have picked up a little knowledge of it since their appointment as land commissioners. They were, all three of them, common law lawyers."[18]

Pierce dispatched three lame duck Democrats to replace Hall and Thornton and to fill the vacancy left by Wilson's rejection: Alpheus Felch, recently defeated for reelection to the Senate from Michigan, Thompson Campbell, and Robert A. Thomas, representatives from Illinois and Virginia who were not reelected in 1852. The first two were doubtless familiar with public land system, and Felch at least may have known something about the 942 private land claims in Michigan. Whether they were better prepared to deal with the Mexican land claims than their predecessors might be questioned. An early complaint about the decisions of the new members was that they apparently substituted for the principles of equity which had earlier been a controlling factor the tendency to insist on the letter of Mexican law.[19]

The result of this change from Whig to Democratic control of the Land Commission and from the emphasis on equity to the more rigid interpretation of Mexican law is reflected in the decision rendered by the two sets of commissioners.[20] From January 5, 1852, to April 23, 1853, when news reached San Francisco that new commissioners were to displace the Whigs, 70 claims had been decided, of which 69 were confirmed. The judgment of the commissioners was followed on all but one of the claims which were

appealed to a higher court.[21] Between April 18, 1853, and October 10, 1854, 325 claims were adjudicated by the new Commission, 223 being confirmed and 102 rejected.[22] Such a large difference in the leaning of the two groups of commissioners bears out the *Alta California* criticisms and the views of other Californians that the new members were tightening up requirements for confirmation.[23] It should be said, however, that the Whig Commissioners in their efforts to show progress because of the criticism of their slowness, seemed to have selected claims that could be easily decided favorably. Many of the 68 were never taken beyond the Commission.

Meantime, Wilson, Hall, and Thornton turned their attention to law practice in the defense of the claims against the government. Wilson became the attorney for the Larkin and Limantour claims, Hall for a time was "consultant" with Halleck, Peachy & Billings, and Thornton became one of the most active attorneys pressing for confirmation of the claims. After his service was over, Felch likewise became involved in title questions in California.[24]

With 813 claims to be considered within the three years allowed by the Land Act, a period later extended to five years, it must have been apparent at the outset that those claims well supported by documents and showing clear evidence of occupation and improvement would be easily confirmed. In fact 209 claims were carried no farther than the Land Commission, whose confirmation or rejection was final as no appeal was taken by either side. Of these 209 claims, 84 were confirmed though boundary questions might further delay the patent. Under the earlier procedure these 84 claimants might have had to carry their appeals to Congress for final confirmation with all the trouble and expense involved in winning favorable action by both branches of Congress. Owners of 125 claims rejected by the Land Commission because fraud had been detected, because they overlapped other claims, because they were shown to be mere occupancy rights, or because they lacked reliable parole testimony accepted the inevitable and urged their rights no further.[25]

Much has been made of the necessity of the claimants to carry their cases to the district court and even to the Supreme Court. It is true, the majority of the claims were taken to District Judges Ogden Hoffman and I. S. K. Ogier. Ogier was well known to take a highly favorable attitude toward the claimants. Challenges by the district attorney were weak, if they were made at all, before Black became Attorney General in 1857; and Hoffman leaned strongly toward the claimants because of his overwhelming concern for the Supreme Court decision in the Frémont case in which he had been overruled. The fees of attorneys for the claimants in cases in the district courts should have been modest before Black became Attorney General and Stanton was placed in charge of the government defense of claims in San Francisco.

The early laxity of the district attorneys, Ogier's bias in favor of the grantees, and Hoffman's hasty consideration of the negative issues involved in the land claims led to the confirmation of highly questionable claims, partly because of over dependence on the Frémont decision and partly because Hoffman seemed quite willing to confirm with the understanding that the Supreme Court would pass upon the delicate questions he wished to avoid. Some of his early favorable decisions were not challenged, appeal was dismissed, and the titles confirmed.

A case in point is the floating Arroyo Seco claim of Andrés Pico to be located within 50 leagues of Sacramento, Amador, and San Joaquin Counties. It was granted to Teodocio Yorba in 1840 and was said to be occupied by 1848, though at least some of the witnesses as to occupation had a bad record for falsely testifying. After rejection by the Land Commission the claimants appealed to the district court where "the case had been submitted without argument on the part of the United States or the suggestion of any other objections to its validity." Hoffman was thus left to work his way through the legal entanglements without help from the district attorney, who should have prepared himself to aid in deciding the case. Lacking evidence of confirmation by the assembly and proof of continued occupation, Hoffman approached the claim by showing that Mexico had done nothing to denounce or regrant the land, and for the United States to reject it now would be tantamount to a destruction of a vested interest and a major equity. The Frémont case compelled him to confirm it. Having failed to make an argument against it before the district court, the district attorney, apparently with the approval of the Attorney General, allowed the claim to be dismissed without further appeal, thus assuring patent when the survey was completed. Yet a later memorial of the California legislature declared that the grant had been unknown to settlers who had moved upon it between 1849-1856, that the settlers maintained it to be an antedated grant, and the California legislature called for a Congressional examination of the claim. However, the patent had been issued in 1863. Again a questionable claim, or at least one against which there were grounds for dismissal, had been confirmed.[26]

Virtual default by the district attorney was also responsible for the confirmation and patenting of the Ranchería del Rio Estanislao of 48,886 acres. Confirmed by the Land Commission and not effectively challenged by the district attorney before Judge Hoffman, the grant was confirmed by Hoffman even though the signatures of the governor and the secretary to the grant were "suspicious," the grant was sealed with the questionable Limantour seal, and another vital document had been lost. With the approval of the Attorney General the appeal was dismissed in 1857, and the patent issued in 1863. Before then, evidence was brought forward showing that the documents were forged and that there was no justification for the confir-

mation of the grant, but it was too late to reopen it. Laxity of the government attorneys and Hoffman's disinclination to reject claims where there seemed any evidence to confirm them produced another serious blunder.

With the appointment of Jeremiah Sullivan Black as Attorney General by President Buchanan, and Black's selection of Edwin M. Stanton as principal attorney for the defense of the United States interests in California claims, the picture changed overnight. The Frémont case lost most of its precedent-making significance, and the Supreme Court was persuaded to look much more critically at the supporting evidence. With either Black or Stanton carrying the government defense before the Supreme Court, Hoffman was reversed in 21 cases, and on one he was reversed twice. Some of the reversals were based on somewhat technical grounds, but others were founded on clear evidence of fraud, perjury, fabrication, antedated and otherwise spurious documents, and the employment of "professional witnesses" of standing who were extremely careless in the testimony they gave.[27]

Cases were carried to the Supreme Court either because of rejection by the lower courts or on appeal by the United States because of prior confirmation. One hundred eleven cases involving land claims reached the Supreme Court, but this number represents many fewer individual cases because some of them were before the Court two, three, and four times. The Panoche Grande case was before the Court on four occasions, the White-Miranda claim three times, and some fifteen claims were there not for title but for boundary questions, such as quantity of land to be included or other technical matters after ownership had been determined. Less than one eighth of the claims ever reached the high court. The Supreme Court leaned so far in the direction of leniency in the precedent making Frémont-Mariposa decisions of 1854 and 1855 and again after the appointment of Justice Field in 1863 that a reading of the decisions leaves one with the feeling that the greatest readiness was shown by the court to accept any substantial evidence in the records of the intent of Mexican officials to make the grants. Furthermore, as may be seen below, buyers of the claims later found to be defective were subsequently permitted to purchase them from the government at the privileged preemption price of $1.25 an acre. True, there were some hardship cases owing to the discovery of fraud, forgery, deception, and plain misunderstanding, but surely Mariano G. Vallejo's patents to 68,486 acres and John Sutter's patent to 48,839 acres, if properly managed, were sufficient to keep them from poverty. If not, what amount would have accomplished that object?

The Act of 1851 was not "in reality a violation of the Treaty of Guadalupe Hidalgo," nor was it "an instrument of evil" or a "devil's instrument." There was no such thing as "needless persecution of the grant holders" by the Attorney General and the courts, and it was not the Land Acts which

"stripped" from the California rancheros their property. Neither were the claimants "considered guilty until they had proved them innocent." Bancroft's "spoilation of the grant-holders" is sheer nonsense, and his insistence that "it would have been infinitely better to confirm promptly all the claims, both valid and fraudulent" is evidence of the unreasoned and unjust condemnation of the land law which so long characterized elite California opinion.[28]

Such irrational denunciation of the Land Act of 1851 and of the subsequent history of adjudication under it reveals an astonishing failure to appreciate the careful protection Anglo-Saxon-American law has given private property. From the days of the Founding Fathers through the nineteenth century the legal profession and the courts seem to have been obsessed with this need. Furthermore, it was a California lawyer, Stephen J. Field, a justice of the state's Supreme Court in 1857 and a member of the Supreme Court of the United States from 1863 to 1897, who was to make the Fourteenth Amendment a bulwark against liberal and radical state experiments with limitation upon property rights. More directly pertinent here, it was Field who, in a decision assuring Frémont the sole right to the gold on his Mariposa rancho, disregarded Mexican law which had reserved precious minerals.

Contrary to the clear intention of Mexican law, Field declared:

> There is something shocking to all our ideas of the rights of property in the proposition that one may invade the possessions of another, dig up his fields and gardens, cut down his timber and occupy his land, under the pretense that there is gold which he is mining.

In another case he reversed an earlier California interpretation that precious minerals were reserved to the state, holding that the title to them passed with a grant of land.[29] Field says Professor McClosky was "most fervently dedicated to judicial protection of the property owner against 'communistic invasions'." While Field was on the bench claim owners surely had the law in their favor.[30]

From his first appearance on the Supreme Court of the United States, Field, as part of his "crusade" in behalf of property rights, took a strong stand on California land claims. To quote his own words written late in life: "I endeavored, whenever the occasion presented itself, and my associates heartily co-operated with me, to protect the Mexican grantees."[31] Once a shadowy claim was backed by one or more documents, though not all as many as were required, and some verbal testimony, though not the most reliable or disinterested, he could assume that occupancy and use requirements had been met. Field accepted, without apparent question, testimony of Mexican officials who were proved in other cases to have antedated documents and sworn falsely; he relaxed the practice of requiring full

documentation; he restricted the right of adverse interests to challenge surveys of claims, as provided in the Act of June 14, 1860; he sanctioned the enlargement of a grant resulting from erasure in the papers on the vague and inconsistent testimony of officials responsible for the erasure; he no longer required "cultivation and inhabitance;" and the fact that a man's total grants exceeded eleven square leagues was not permitted to have a bearing with him. Nor could the discovery of later evidence revealing that documents and testimony on which the high court had confirmed a claim were forged, antedated or false, change the original decision. "The decision is no longer open for consideration, whether right or wrong it has become the law of the case. This will not be controverted, . . ." he declared.[32] Though Justice David Davis resisted the persistent influence of Field, the latter more commonly carried the court with him, but one may well question how far he was wandering in his interpretation of Mexican land law.[33]

It was Field who was looked upon as the "most unrelenting foe" of the settler element,[34] but it was the officials of the General Land Office who allowed the many small individual improvements to be included within the claims when they were surveyed, Congress which adopted a number of measures more favorable to large claims than to settlers, and the local courts which allowed ejectment procedures to be used against the settlers. With such a combination against them, it was not difficult to convince the settlers that government was hostile to them and favored the claimants.

A particularly sore point was the fact that the United States had surveyed public land, sold it, given patents, and in several instances subsequently canceled the patents and declared the land to be a part of a Mexican land claim. Perhaps the most flagrant example of this involved the Tolenas grant of three leagues in Solano County, where controversies over ownership of grants and boundaries kept residents in a state of uncertainty for many years.[35] Originally rejected by the Land Commission, Tolenas was confirmed by the district court in 1859 and not challenged further. However, patenting was delayed owing to a disagreement over a common boundary and because the claim was essentially a floating grant, entitling the owner to locate three leagues where he wished within a 30 league territory between other claims. A portion of that larger area had been surveyed by the General Land Office on the assumption that it would not be included within Tolenas and had been selected and sold in 1857 by the State of California as part of its 500,000 acre internal improvement grant. Eleven people bought land thus opened to them by the two governments, and over the next eleven years developed their farms, investing sums up to $31,000 while assuming that their forthcoming patents were evidence of a clear and unquestioned title. But not so in California. J. W. Mandeville, Surveyor General for California, reported in 1860 that a juridical survey or segregation had not been sought either by the government or by the owners

of Tolenas, that the latter had not objected to the survey of the adjacent lands nor to their subdivision into sections and quarter sections, nor to their public sale. He asked the commissioner of the General Land Office if he should now include within the survey of the rancho, as the claimant obviously wanted, the land which had been granted to California and then sold. He also enquired whether improvements should be included of settlers who had filed their declaratory statements for preemption.[36] J. F. Armijo, owner, insisted that the improved (and, in eleven instances, patented) land was a part of his claim.

When the survey was finally made, it included all the improved and patented lands of the unfortunate eleven. The heirs received their patent in 1868 and promptly ejected the eleven with the aid of the local court. Efforts to secure redress proved fruitless. The California legislature adopted a concurrent resolution summarizing the facts relating to the eleven and urged Congress to "adjust, settle and fix the losses" sustained by the claimants and to provide for their payment. Responding to the appeal, the Senate Committee on Private Land Claims conceded that "the case . . . is undoubtedly one of great hardship," but declared that the government "was guilty of no fraud," that it did not guarantee its title where it was in conflict with a private land claim, and that all the damaged parties could recover was the amount they had paid for the land, without interest.[37]

In the Yokaya case involving eight leagues in Mendocino County, Hoffman accepted the explanation for a forged document and confirmed the grant.[38] The eleven league Ranchería del Rio Estanislao reached Hoffman in 1856, having been confirmed by the Land Commission the previous year. Hoffman found that there was "room for doubt as to the genuineness of the grant," that the signatures of the Mexican officers on the documents presented "a somewhat suspicious appearance," that another needed document had been "lost," and that he had no more testimony than had been presented to the Land Commission. Nevertheless, when the district attorney failed to make an argument in opposition, he deemed it wise to accept the judgment of the commissioners.[39] The decision was not appealed and when it was too late to reverse the decision the judge learned that the grant was based on fraud and forgery. It was even sealed with the false "Limantour seal."[40] The laxity of the district attorney and of the Attorney General were more to blame than was Hoffman, though he must have been mortified when the facts were unearthed.

A second case involving the laxity of the district attorney was responsible for an extremely embarrassing moment for Hoffman when one of his decisions seemed to be quite the reverse of an earlier one. In the Petaluma case involving the fifteen league (66,622 acre) claim of Mariano Vallejo, Hoffman later said that he affirmed the decision of the Land Commission "without examination, and on the statement of the District Attorney in

open Court, that no valid objection to a confirmation existed." However, the grant was four leagues greater than Mexican law permitted in one or more direct grants. Subsequently, the Hartnell-Cosumnes direct grant of eleven leagues came to trial. With Hartnell's direct Todos grant of five leagues, Cosumnes was to have sixteen leagues, or five more than the law allowed. Hoffman followed the Land Commission in reducing the Cosumnes claim to six leagues, though not without considerable discomfiture. That in earlier cases he had confirmed direct grants in excess of eleven leagues, "may possibly be the fact," he said, but now that the issue of eleven leagues maximum for direct grants was raised, he must abide by it. He could only say in extenuation that a part of Petaluma had been granted Vallejo for money advanced the government. The inconsistency in the two decisions irked Hartnell's heirs who appealed to the Supreme Court, which managed to find a rationalization for the difficulty without reversing Hoffman.[41] Hartnell's heirs could take comfort, however, from the fact that they had a third claim (Alisal) confirmed and patented to them which, like the other two, was a direct grant to Hartnell and therefore subject to the limitation of eleven leagues. The overrun was 1,640 acres.

California writers have given the impression that the grants made to Mexicans were still held by them when Americans gained control in 1846 or even in 1851 when the Land Commission was established. Actually, Americans, English, Scotch, Irish, Germans, and members of other nationalities had been penetrating California well before 1846. Some of them had married into well established landowning families, and after naturalization had received grants, or they or their children had inherited ranchos originally granted to people of Latin origin.[42] As a result of twenty-seven of the best known of these mixed marriages (including members of the Alvarado, Bandini, Carrillo, Castro, Cota, Estrada, de la Guerra, Lugo, Martínez, Ortega, Pico, and Vallejo families) 779,643 acres of land were patented to non-Mexican heads of families or their children. Moreover, 133 of the 813 claims presented to the Land Commission had been granted to naturalized citizens. These non-Mexican grantees had 90 claims confirmed to them for 1,552,000 acres in addition to numerous ranchos that came to them through marriage or purchase of Mexican claims. Furthermore, nine claims for 150,250 acres that had been granted to combinations of Mexicans and non-Mexicans were confirmed. That it was not only the "poor" Californians who "suffered" under the Land Act of 1851 is apparent from the fact that 43 claims (for well over 584,000 acres) granted to non-Mexicans were rejected. Best known of these rejected claimants was John Sutter, the Swiss empire builder on the Sacramento who lost his claim for 97,372 acres, but who could take solace in the 48,827 acres for which he received a patent.

It is useful to break down into countries of origin these 133 non-Mexican

original grantees. Thirteen were from England, eleven from Scotland, nine from Ireland, six from Germany, three from France, two each from Denmark, Switzerland, and Canada (including Nova Scotia), and one each from Austria, the Danish West Indies, and Russia. Of the 37 identified Americans (including Larkin's children), nine were from Massachusetts, six from New York, three each from Maine and Kentucky, two each from Connecticut, Missouri, and Ohio, and one each from Indiana, Maryland, New Jersey, Pennsylvania, North Carolina, Tennessee, and Vermont.[43]

Among the larger of the grants originally given non-Mexicans were the 44,362 acre grant to the children of Thomas O. Larkin, two grants totaling 27,701 acres to Larkin's half brother, John B. R. Cooper, the 48,836 acre Sotoyome to Henry D. Fitch, three grants totaling 137,440 acres in which John Roland presumably had a half interest,[44] the 35,487 Bodega grant to Stephen Smith, the 48,747 acre grant to William Gulnac in San Joaquin County, three grants to William Hartnell for 73,819 acres, and the Dos Pueblos and San Marcos grants of 51,108 acres in Santa Barbara County to Nicholas A. Den. Two participants in the Bear Flag Revolt had earlier received grants: William Knight, 44,280 acres (which was rejected), and William B. Ide, Barranca Colorado for 17,707 acres in Tehama County.

Other confirmed claims which were to aggravate Californians for years after they were patented were the 19,571 Sausalito claim in Marin County, the 35,541 acre Yokaya rancho in Mendocino and the 48,866 acre Rancheria del Rio Estanislao in Stanislaus and Calaveras Counties. After the Sausalito claim was patented, it was charged that there was no evidence of approval of the grant by the territorial assembly, that Governor Micheltoreno's signature was antedated, that other papers were either fraudulent or imperfect, that the seal was fraudulently used, that the government law agent had withheld information concerning the falseness of a deposition, and that the law agent was later shown to have an interest in the claim, though whether his interest existed at the time the case was presented is not evident.[45]

Non-Mexicans also purchased claims. Long before 1846 they began buying claims and the process was speeded up thereafter. One of the most knowing Californians, an Englishman who had come to California in 1824, was naturalized in 1839, and became influential in lumbering and in writing, observed in 1847 that in less than a year, "many of the most splendid farms in this country, will have to go by the board. All the farmers are, with a very few exceptions, deeply in debt to American merchants. I think I may say without any fear of exceeding the truth, that half a million dollars would scarcely be sufficient to cover their debts. These people have no other means of paying those debts but by the sale of their cattle . . . or their farms. The creditors are already making preparations for the recovery of money due to them by individuals in every part of California; they are pointing attornies [sic], who will act with vigor in the performance of

their obligations, and there is little doubt that many a noble tract of land will have to change its owner under the hammer."[46] By 1851, 213 claims for considerably over 1,992,000 acres had been conveyed to persons born in the United States, England, Scotland, Ireland, Germany, and other European countries. Some had been sold almost as soon as they were granted to persons not entitled to another grant, to unnaturalized residents not entitled to direct grants, or to those who were at odds with the granting authority.[47] Only by detailed examination of the county records will it be possible to determine what proportion of these early sales were the results of foreclosures.

Summing up, we find that 346 (or 42%) of the claims were presented by non-Mexicans. In addition, a considerable number of claims had either passed to non-Mexicans by 1851 or by the time they were patented, but the litigation was carried in the name of the original grantees. How large this number may be can only be determined by the closest examination. If the Land Act of 1851 acted as "needless persecution of the grant holders" or of Royce's "poor Californians," it bore on Americans and other non-Mexican grantees or assignees with equal severity. Among the "poor Californians" who had one or more of their claims invalidated were such affluent and non-Mexican residents as Thomas O. Larkin, John C. Frémont, Abel Stearns, John Forster, and Nicholas Den.

That numerous Spanish speaking Californios lost their great ranchos or at least the larger part of them in the first generation after American control was established is probably true. Progress meant more intensive use of land. Extension of the land tax assured division, just as it was bringing about more intensive development and sub-division of the bonanza farms of Indiana and Illinois. Litigation was another factor contributing to the breakup of large holdings, not only that involved in the adjudication of the Mexican claims but also court action resulting from intra-family disputes, conflicts with the squatters whose attorneys found numerous flaws in titles long after they were confirmed and patented, and the anxiety of claimants to stretch their ill-defined boundaries to the utmost, thereby involving them in legal conflicts with other owners. Other factors which contributed to the division or loss of lands—such as competitive economic existence in a world increasingly influenced by Yankees, debts to meet gambling and horse racing losses, mortgages carrying one to three percent a month interest, and generally living beyond means—are brought out by Leonard Pitt in *The Decline of the Californios.*

One of the complaints that writers have made against the Act of 1851 and its process of examining titles to Mexican land claims in California is that it was responsible for long delays in gaining final confirmation and titles. Actually, claimants were responsible for much of the delay by attempting to include not originally thought of as within their boundaries

and later made valuable by the improvements of the settlers. They also caused delay by their disinclination to press forward title proceedings, because, until they were completed and the boundaries finally determined, the owners could exact rents from farm land they ultimately would lose. The *San Francisco Bulletin* of October 1, 1879, charged that the claim holders had such a strong interest adverse to final surveys that they evaded the law for years.

Members of Congress were not entirely satisfied with the decision they made in 1851 to surrender all share in decision-making respecting the validity of the claims in California, nor, in fact, were the claimants who lost out in the courts. Though the past handling of the land claims had been enormously costly in time of members of the Senate and House Committees on Private Land Claims, it had given congressmen an opportunity to render valuable favors in exchange for other favors to them or their constituents. With the past experience in taking dubious claims to Congress, the California claimants were not ready to accept the finality of the Act of 1851 with its statement that claims not filed for consideration within two years from March 3, 1851, would be outlawed or that the decision of the Supreme Court was the last step beyond which there was no further appeal. Before long it was reported that the halls of Congress were swarming with lobbyists seeking special favors to apply to California land claims. Notwithstanding the desire of many members of Congress to abide by the Act of 1851, Congress adopted a series of special acts: (1) to allow either late consideration or reconsideration by the district courts of rejected claims; (2) to permit purchasers of claimants' titles which had been rejected to repurchase their tracts from the government at $1.25 an acre; (3) to grant land office scrip to a claimant whose land had been sold on the assumption that two rejections by the Supreme Court should be final; and (4) to confirm a claim which had never been judicially considered.[48]

The first step taken by Congress granting additional time to owners of land claims was an act of February 23, 1854, giving to Henry C. Boggs and eight other individual partnerships the privilege of submitting their claims to tracts in Salvador Vallejo's Entre Napa rancho in Napa County. Vallejo had shown much enterprise in selling portions of his Napa ranchos to more than 50 persons. When the Commission began to function there were 43 subdivisions presented for confirmation of which 12 had been patented by 1880. Included were 8,365 acres for Otto Frank and 3,178 for Vallejo. An attorney for nine small claims ranging from 50 to 348 acres, having been ill with smallpox just at the time he had completed his briefing of the cases for presentation, persuaded Congress to give him an additional six months in which he could take them to the Commission even though the courts, with some uncertainty and inconsistency, had endeavored to establish that the original grantee or his assignee before subdivision should bring the action

for confirmation and not the many owners of subdivisions. Doubtless the overburdened members of the Commission and the District Judge were not happy at the additional work load, but Congress's will was of course law. None of the claims was patented or confirmed by 1880, so we may assume that the titles were defective.[49]

In 1854 Congress interfered a second time in the adjudication by the courts of the many cases before them and with results no more successful, except perhaps to increase lawyers' fees. José de la Rose, a protégé and dependent of Mariano Vallejo, who had long been without substantial resources, came forth, after the time for presenting claims to the Commission had passed, with a claim for 270,000 acres in Solano County. It was alleged that the claim had been given to him by the governor in the last year of Mexican control. The tract being barren of improvements and with no apparent claimant, the General Land Office had surveyed five townships and had allowed over 100 settlers to enter their preemption claims. Improvements worth up to $4,500 had been put upon these 160 acre tracts. A claim of such size in Solano County, no matter how dubious, was certain to attract lawyers and it was taken up by Calhoun Benham, who had been the district attorney in California (1851-1853) when Franklin Pierce displaced him by a Democrat.

A private bill was introduced in Congress to allow de la Rose or his assignee, the Luco family, to submit their claim, despite the deadline, the excuse being that de la Rose's wife had abandoned him for Mexico, taking all the papers with her. In the usual hurly-burly session every member of Congress has a bundle of special measures which with good sponsorship may easily be slipped through without discussion, as was the Luco Act. However, this act stirred up a hornet's nest in Solano County. A settler's paper called it the "Luco Swindle," and denounced the commissioner of the General Land Office for withdrawing from further sale all the land within the claimed areas.[50] Settlers asked Congress that should the Luco claim be confirmed it be located only on unsurveyed land which, presumably, was the least desirable. Judge Ogden Hoffman, before whom Ulpine's claim first came for adjudication, rejected it with considerable certainty, and on appeal Judge Grier of the Supreme Court struck it down in a devastating decision. Grier found "not the slightest trace of any such grant" in the Mexican archives. He declared that many of the supporting witnesses, including Mariano Vallejo, had contradicted themselves and each other, that the former Mexican officials who had testified in its behalf had lied, that the varied stories of improvement on the claims were "mere fabrications," and that the supporting documents, signatures, and the seal were antedated, "false and forged. . . ." We may doubt whether an American court ever used stronger language in denouncing the persons responsible for bringing such a wretched case before it.[51]

Juan M. Luco, a business man of substance, was not ready to concede defeat. He appealed to an act of 1856 granting purchasers of Mexican claims which had been struck down as invalid the right to purchase from the Government their portion at $1.25 an acre; he demanded the right to acquire the entire tract, though much of the land had been settled upon, either preempted or homesteaded, and the patents delivered. Fortunately for the settlers the register of the land office found for them, declaring that the law had stipulated continuous possession, and this Luco could not prove.

In 1862 Congress took two more steps interfering with the action of the courts, though one was only to remove a technicality in the way of a patent. The second step was, like that of 1854, to allow a "poor man" who had been badly advised by his attorneys to retry his claim for the two league Posa de San Juan Bautista grant. The Senate Committee on the Judiciary, to which the bill to permit a retrial was referred, presented a report describing the complication into which the claim had fallen because of the ignorance of the Spanish language of the attorneys and held that its rejection by the district court had been on a technicality raised by the district attorney. The committee's report indicated no doubt about the claim. The district court, however, rejected it again and on appeal the Supreme Court could find no basis for the claim. Congressional interference had added to the expenses of the claimant without any return and had caused much hard feeling among the settlers on the Posa de San Juan Bautista who feared for the value of their improvements.[52]

While holding the title of Commandant General for the Mexican government in Sonoma, Mariano Vallejo massed claims for himself totaling 171,000 acres; however, except for his Petaluma grant, they were incomplete, lacked documentation, or had been granted first to another party who, seven months before the grants were made, actually had conveyed such right as he might gain to Vallejo. Suscol, the largest, including 90,000 acres in Solano and Napa Counties, lacked required documentation, one or more of the documents presented was spurious, verbal testimony was questionable, and the Supreme Court in a five to two decision struck it down. I have told the story of Suscol elsewhere and need only summarize here. Vallejo had sold part of Suscol to others, mostly in large tracts, and some improvements such as fencing had been made. With invalidation by the Supreme Court the entire area became private domain subject to preemption entry according to the Land Act of 1851, and many squatters rushed upon the tract to establish their quarter section claims. In 1863 Congress, under the assumption that the buyers of the Vallejo title were farmers living upon the tract, authorized them to preempt their land to the extent they had "reduced it to possession." Tracts as large as 5,000 acres were thus acquired. The inevitable conflict followed between the Vallejo

buyers, most of whom were non-residents, and the squatters seeking the right to file their 160 acre preemption entries. Ultimately, the courts held for the former, leaving in the wake of their decision a great store of angry feeling.[53]

In 1864, 1865, and 1866, Congress extended the Suscol principle to buyers of three other defective and invalidated claims in Marin, Alameda, and Yolo Counties, and in the latter year carried the principle farther by allowing buyers of titles of all discredited land claims in California, save those in San Francisco, the right to purchase from the government the land they "possessed."[54] In doing so Congress and the courts were making a mockery of section 13 of the California Land Act of 1851 which declared that all land in claims which had been finally rejected by the courts "shall be deemed, held, and considered as part of the public domain of the United States" and of course subject to preemption and homestead entry after 1862.

The next step by Congress to interfere with the courts in the adjudication of the land claims in California was in connection with the two conflicting claims in Sonoma County, both of which had been carried to the Supreme Court on two occasions, and failed in confirmation. After years of labor with members of Congress, lobbyists in 1872 succeeded in influencing it to return the better of the two claims to the courts for still another try, even though the land had long since passed into private hands as preemptions on public domain. Instead, however, of regaining the land should the claimants win, as they did, claimants were to be entitled to scrip, (the so called Valentine scrip). It was the most valuable of all the many types of land scrip the government granted, since it could be entered on any unreserved public land on which there was no prior entry.

Having opened to the Miranda-Valentine claimants for San Antonio the prospect of gaining valuable scrip for their claim if the courts approved it, Congress found itself faced with the demands of owners of other rejected claims which had long since been developed by settlers to allow new trials and to give the claimants, if successful, scrip in lieu of land. The best known claims were the Santillan-Bolton and Barron-Philadelphia Land Association claim of the three league Mission Dolores in San Francisco and the 400 league Iturbide claim on the Sacramento. Failure to gain early confirmation led to the abandonment of the hope of recovering city property and the substitution of scrip like that allowed to Valentine in the event the courts held for the title. In the 1870's the House and Senate Committees on Private Land Claims issued seven reports, some favorable and some unfavorable, on the Santillan claim, but Congress was not willing to make further issues of scrip that could be located on the site of old Fort Dearborn, on the Mission Rock in the San Francisco Bay, or on desirable strips of land along Lake Merced.

The annals of Santa Barbara County are replete with controversies over

the confirmation and surveying of the boundaries of a number of ranchos which aroused intense excitement. It was asserted that influence had been used at every level to secure confirmation of the grants and of the surveys of both Los Prietos y Najalayegua and the Ex Mission Buenaventura. The Prietos claim of one and a half to four leagues apparently was regarded as of such slight value and so dubious that no effort was made to take it before the Land Commission. Later, when there seemed a possibility of discovering quicksilver or oil on the claim, it attracted the interest of Thomas A. Scott, President of the Pennsylvania Railroad and a promoter of the Texas and Pacific Railroad. Scott was deeply involved in oil land speculations. Partly for him and for others, Levi Parsons, a somewhat discredited Democratic politician of San Francisco, arranged to buy all or parts of such well known ranchos as Simi, Calleguas, La Colonia, Ojai, San Francisco, Cañada Larga, and Conejo which amounted to 245,000 acres. Other ranchos were leased, bringing the total the two controlled to over 300,000 acres. Prietos also attracted them because of its proximity to Santa Barbara and its mineral prospects.[56]

Before any improvements could be made on Los Prietos it was advisable that the title be cleared. For a powerful businessman like Tom Scott this was not difficult, and in 1866, without any consideration on the floor of either house of Congress, Los Prietos was confirmed, the only Mexican claim so approved without a judicial trial. The next step was to have the boundaries surveyed so as to include the supposed quicksilver and oil bearing land. A government survey was ordered to conform to the "wishes" of the claimants which when completed was found to include 47 leagues (208,742 acres) and to cover numerous preemption claims and portions of the pueblo of Santa Barbara.[57] News of the survey greatly excited residents of that community and settlers on the lands they thought to be public domain and led to a bitter fight to have Congress repeal the act of confirmation. In defense of their expanded claim the attorneys of Scott and Parsons argued that the confirmatory act of 1866 made a new grant of Prietos and was not subject to the eleven league limitation of the colonization law of Mexico.[58]

George W. Julian, a battle scarred veteran of settlers' rights and opponent of abuses of the land system, declared that the memorial asking confirmation of the grant was a forgery: "the statement of pretended facts embodied in the memorial was entirely false; that, in fact, no such grant existed, the conditions not having been complied with. . . ." He called it a "monstrous conspiracy against justice and decency and the rights of settlers on the lands of the Government. . . ." Julian persuaded the House to approve his measure to repeal the act confirming Los Prietos, but the Senate took no action on the bill.[59] However, the General Land Office rejected the survey and ordered another to be made, which was approved for 48,728

acres. This seemed to end what W. H. Hutchinson has called "one of the most blatant land fraud cases in the history of California."[60] Actually the land thieves refused to let go of their enlarged claim. In 1887 they were still urging the Commissioner of the General Land Office to reopen the survey to enable them to gain the 160,000 acres they contended should be included within the grant.[61]

Congress was not through with its grant of grace to persons claiming Mexican grants. In 1879 it was sufficiently impressed with the application of assignees of halfbreed Indian claimants, José and Pablo Apis, to authorize them to bring their claim to a two league grant of La Jolla, on one of the most delightful spots in San Diego County, before the District Court of California with a right of appeal to the Supreme Court. In explanation of the bill it was said that the Apis family were Spanish and knew no English, were not aware of the act of 1851 or its two year limitation and indeed their descendants did not know of their delinquency until an attorney called for their deed. This appeared sufficient to Congress to justify enactment without any discussion. However, the explanation did not hold water, for Pablo Apis could read and write, though he probably was not familiar with English, had also been a grantee of Temecula rancho which had been confirmed by the District Court in 1857, and had been patented in 1873, or six years before the relief act of 1879. Had the Apis title been approved by the courts under the act of 1879, that would probably have only marked the beginning of a long struggle for further redress, because the measure was so ineptly phrased as to leave more questions unanswered than answered. No lands were to be confirmed to the Apis family on which there were other antecedent claims, nor would a favorable decision give the confirmees any claim for further compensation by the government, and the Apis descendants were to execute a release to every person claiming property which the decision showed the Apis family once owned.[62] In the event of victory, Congress would almost surely have been asked for further relief, presumably in the form of scrip, as had been awarded Valentine. Congressional weakness in giving way to attorneys struggling for the approval of claims they represented in this instance did no harm, as events turned out, for the district courts struck down the title which was recognized as valid except that continued possession, as required by the Act of 1879, was not proved.

The surviving manuscripts of Albert & Thomas Dibblee, an outstanding mercantile and shipping firm in San Francisco and sheep raisers in Santa Barbara County enable one to trace their efforts to gain approval of a long neglected private land claim, Las Cruces in Santa Barbara County, though they do not explain why it took so long for the heirs of the original owners and their assignees to commence action. Cruces was adjacent to other ranchos of the Dibblees who saw that it would round out their possession

and permit enlargement of their operations. They acquired an interest in the rancho and in the middle seventies began a move to secure a patent with the aid of the ablest attorneys practicing in Washington, Britton and Gray, Mullan & Hyde, and Smith & Redington. In 1870 the joint holdings of the Dibblees and their partner, Col. W. W. Hollister, ranked with the Flint-Bixby partnership in the sheep business and later in subdividing and retailing the numerous ranchos they had acquired. Included in their holdings were San Julian, Espada, Santa Ana, Gaviota, Salisipuedes, Lompoc, and a part of Cruces, or 122,913 acres. In common with most rancho owners in Santa Barbara County, they had almost constant trouble with squatters who questioned their titles and their boundaries and persisted in carrying their issues to Congress, making it necessary for the rancheros to keep closely in touch with their Washington lawyers. Britton & Gray and Smith & Redington had formerly served in the Land Office and with Mullan & Hyde made use of familiar channels that enabled them to be intimately in touch with every step being taken on claims and to exert powerful pressure against anticipated harmful action. Settlers who were contesting the large Mexican claims thought the officials of the Land Office were strongly inclined to favor the claimants, but Albert Dibblee, in 1871, spoke of the "former hostility toward our Spanish grants" as continuing to govern the department. He was delighted that George Julian, former chairman of the House Committee on Public Lands, had been defeated for reelection but did not take much comfort from the new officials in the Land Office who discredited old monuments and boundaries on the slightest pretext and reduced the grants on the assumption that anyone "owning over 160 acres ought to be hung, drawn & quartered."[63]

By 1876 the Dibblees and Hollister were pulling wires to induce Congress to allow this claim to Las Cruces to be considered by the District Court of Southern California. They agreed to pay a $500 fee to win approval of a bill for Cruces and acceptance by the Land Office of the title to Lompoc. Dibblee was massing the support of Ex-Governor Romualdo Pacheco, Pablo and Francisco de la Guerra, Senators Newton Booth and Aaron A. Sargent, Congressman Peter Wigginton, Dr. James L. Ord, and the mayor of Santa Barbara. He was troubled that the Santillan-Mission Dolores claim in San Francisco was revived and pressed upon Congress at this time, fearing that it would bring down the wrath of the residents of that city upon all private land claims.[64] Thomas Dibblee took himself seriously and in the midst of the campaign to secure the confirmation of Cruces became depressed at the attitude of Zachariah Chandler, Secretary of the Interior who, he said, "must be an Agrarian and a bad man for such a place, either acting in interest of the great R. R. Companies, or bidding for Squatters' votes."[65] Dibblee also found William A. Piper, a one-term Democratic congressman from California unreliable, being "one of those

fellows who are looking for popularity among the Squatter class, and he does not wish to have them think he is going to favor aristocratic land owners. . . ."[66]

I have observed that new members of Legislative bodies, and new men as Editors and in other capacities, begin with such tendencies, and are under impressions that it is very necessary to curry favor with the Squatter element, but afterwards are very apt to find they have mistaken their interests, and that these Squatters, after all their loud talk, are really insignificant in influence for the advancement of the aspiring Politician.

Dibblee's lobbyists failed to obtain congressional approval for court consideration of the title to Cruces in 1876, possibly because Congress was troubled at the numerous efforts to reopen long since decided ownerships and bored with the conflicts over boundaries of ranchos. Members might well have asked why the Act of 1851 had not succeeded in leaving all such issues to the courts. In addition to the moves to grant a trial for the title of Cruces and to reopen the three league Santillan claim, efforts were being made to provide relief for settlers on Pulgas who had made their improvements on land the claimants managed to have included within their boundaries, to redraw the boundary of the eleven league Laguna de Tache rancho on the Sacramento, to allow a retrial of the 400 league Iturbide claim,[67] and to cancel the patent to the 942 acre Cañada de Guadelupe y Rodeo Viejo in San Mateo County. Also private measures were being pressed upon Congress that would affect the San Vicente the Warner-Aguas Caliente, and the Richardson-Sausalito ranchos.

Just at the time when Congress was feeling the pressures from lobbyists asking for numerous measures affecting California land claims it was being swamped with other types of claims against the government. As in the 1850's it considered strengthening or supplementing its act of 1855 to handle the many claims which the House Committee on Reform in the Civil Service found so numerous as to be considered "blindly or partially" and ended in "great abuses. . . ." The original act creating the Court of Claims had merely given it advisory authority to pass upon certain types of claims and to send its decision to the Secretary of the Treasury for his approval and then on to the Congress for its final approval. Legislation of 1863 and 1866 had given the Court the right to make final judgment, subject only to review by the Supreme Court, but still limited the kinds of cases over which it had jurisdiction. The House Committee on Reform in the Civil Service now felt that all claims should go to the Court of Claims to avoid the "great abuses" and the "chief source of corruption in Congress," but primarily to rid Congress of another portion of its burden that took members away from its more appropriate legislation. Although intended to apply to money claims, all that the Committee said about the pressure upon Congress was equally pertinent to the handling of private

land claims. Congress had not succeeded in ridding itself of the task of reconsidering land claims the courts had decided upon unfavorably to powerful economic interests.[68]

It was the year the House Committee on Reform in the Civil Service made this report that the Dibblee-Hollister group, picking up where it had failed in 1876 succeeded in getting a favorable report from the Senate Committee on Private Land Claims which held Cruces to be "a perfect grant." As in the Apis case the grantee of Cruces, Miguel Cordero, and his family were pictured as knowing no English, "wholly illiterate," and unaware of the procedures they needed to follow to gain a United States title. Notwithstanding their neglect, their ownership "had been respected by all adjacent settlers . . . to the present day." The lands had been withdrawn from all forms of entry, though by what authority is not evident, and only access to the courts stood between the claimants and the security of a government patent.[69] The report was followed by favorable action on the bill proposed by the committee, but only after it was amended to protect any rights of settlers previously established on Cruces. The act provided that no more than 8,888 acres were to be approved (and exactly that amount was included in the patent), no lands to which there were any valid preemption or homestead claims were to be included, and the claimants were to execute releases to any persons in possession under preemption of homestead filings. Thomas B. Dibblee regarded this amendment as evidence of the "demagogism" of its author, Senator Aaron A. Sargent of California, which "asserted itself in exhibiting to squatters his extreme care for their rights. . . ." Dibblee scorned Sargent as "a Skunk of a fellow to be United States Senator."[70] The Dibblee correspondence shows how carefully the principals and their lobbyists executed their plans by alerting Senators Newton Booth of California and LaFayette Grover of Oregon and members of the House Committee on Private Land Claims to the importance of the claim and the need to get it before the courts to avoid conflict with squatters. While the special bill was being pushed to enactment in Washington, Thomas Dibblee was trying to buy up the rights of the nine heirs in California, hoping to secure five of the nine before enactment of the measure.[71]

The District court confirmed the grant, and as the government had no right of appeal under the special act as it had under the Act of 1851, the title could not be carried to the Supreme Court. Boundary questions further delayed the issue of the parent and fretted the Dibblees but they were resolved by 1883 and the patent finally issued.

A word should be said about the McGarrahan-Panoche Grande claim including quicksilver mines which notwithstanding rejection by the Supreme Court, the fact that a district attorney had sanctioned its dismissal hough he had an interest in it, and other improper relations of owners with

public officials, and the absence of any evidence of a grant, was kept before Congress for 40 years and came very close to gaining special legislation that would have assured confirmation. The claim had been acquired by a corporation with a capitalization of $5,000,000 which made available liberal expense accounts for its lobbyists to work for confirmation. Its very complicated judicial history enabled its sponsors to make it appear to some members of Congress that an injustice had been done and who therefore were willing to support a move to allow the claim to be carried to the Court of Claims for another consideration. Its ablest defenders in the Senate were Henry M. Teller of Colorado and Eppa Hunton of Virginia, who for years had been the principal lobbyist for the claim but now, as an equally ardent and knowing supporter, made the strongest argument in its favor, after first saying that he no longer was retained by the Company. Persistence seemed to pay off—or was it that Congress concluded after 21 reports of House or Senate committees, some favorable and some unfavorable, the only way to rid itself of the issue was to let it go to court again. In support of the measure Teller remarked about the number of favorable reports the Senate committees had made on the claim but did not mention that all had been made by him. Both houses in 1892 adopted a measure that so controlled the evidence that could be offered as to virtually promise confirmation. Benjamin Harrison was too much of a legalist to accept this and sent the measure back to the Senate with his veto. Amended to remove some of the objections it went to a vote but only after old Justin Smith Morrill of Vermont, troubled about many letters that had come to light showing how the lobbyists had exerted their influence to get favorable action, read sufficient of them to induce enough Senators to change their vote and thereby defeat the enactment over the veto. The History of Panoche Grande offered no support for the view that Congress should have any part in trying claims or in reconsidering action on private land claims decided by the Supreme Court.[72]

Other efforts were made in Congress to interfere with or set aside decisions by the courts and by officials of the General Land Office respecting surveys, which sometimes did not coincide at all to the maps and descriptions in the Diseños, (crude maps filed with applications for grants) or acreage. In 1887 the Surveyor General for California listed some of the claims which, whether worthy of confirmation or not, had been greatly enlarged by surveyors whose work was not always subject to judicial consideration. Among patented claims which Congress was asked to reconsider and reduce where Muscupiabe (enlarged from one league to 30,144 acres), Lomas de Santiago (granted for four leagues but patented for 47,226 acres), Milpitas (for two leagues but patented for 43,280 acres), Buena Vista in Monterey County (for two leagues but patented for four under two names).[73] An issue that greatly delayed the patenting of El Sobrante in

Contra Costa County was the effort of H. W. Carpentier to enlarge an eleven league grant to include 89,000 acres.[74]

One of the most bitterly contested of these efforts to upset a patent involved the Pulgas claim of four leagues in San Mateo County, which had been rushed through the courts, confirmed, and a survey made to include 35,240 acres, or more than twice the amount stipulated in the documents. Sustained efforts to reduce the acreage seemed on the point of success in 1879 when Representatives Peter Wigginton and John K. Luttrell, of California, persuaded the House to approve a measure that would return to the courts the right to adjudicate the erroneous or fraudulent survey of Pulgas that they had never been able to pass upon and to insist that the Supreme Court approval of a four league grant be upheld. The surplus of 17,490 acres that the owners of Pulgas had gained would be returned partly to the public domain and partly to an owner of a neighboring claim. In the course of the debate it was estimated that 600,000 acres were "improperly included within surveys of private land claims in California. . . ." Although approved by a House vote of 103 to 59 the measure was not acted upon by the Senate.[75]

In summary one may say that the Land Act of 1851 was a statesmanlike measure to apply the time-tried system of adjudicating the land claims and to make the courts responsible for the entire process, subject to such aid as the General Land Office might render. In subsequently interfering with that transfer of responsibility, Congress opened Pandora's box, giving an opportunity for the revival of controversies over titles long since patented. At the same time, evidence was piling up that irresponsible law agents and district attorneys had permitted dubious claims to be confirmed, and that the General Land Office had sanctioned the surveys of boundaries which to include settlers' claims had been extended well beyond the outline in the diseños. When government finally recognized how distorted the acreages and boundaries were, it sought without success to recall earlier decisions. That the preponderance of error benefited the claimants seems clear. It was not the Land Act that was responsible for the long and expensive process of adjudicating the claims. Rather it was fraud that made necessary the closest scrutiny of the grants and all the documents and other evidence offered in their behalf and equally close scrutiny of public officials of both the Mexican and American governments in the trials of the claims. It was the anxiety of the claimants to engross the most desirable land, no matter whether their diseños so provided, to enlarge upon the leagues or acreage intended, to insist upon the right to determine with the official surveyor where the lines were to go. It was their disinclination to hasten the final adjudication of their claims and their delay in and litigation over surveying which assured them the use, profits, and rents of lands the courts might take from them either because of the invalidity of their grants or because they were excess lands outside the proper boundaries of their claims [76]

NOTES

1. 9 *Stat.*, 631 and 10 *Stat.*, 612; *Congressional Globe*, 33 Cong., 2 Sess., 114.

2. I have examined the political maneuvering of those who favored easy and swift confirmation of California land claims, particularly Thomas Hart Benton and John C. Frémont, and the conservative coalition of Whigs and Democrats who preferred to leave to the courts the entire adjudication in "The Adjudication of Spanish-Mexican Land Claims in California," *Huntington Library Quarterly*, 21 (May, 1958), 213 ff.

3. My calculation from Ogden Hoffman, *Report of Land Claims Determined in the United States District Court for the Northern District of California* (San Francisco, 1862), appendix. Notwithstanding some errors and incompleteness the appendix, with its index of ranchos and of claimants and the Table of Land Claims, is a starting point for any analysis of the claims. For the characterization of the "eleventh hour" grants see Hoffman's appended statements to the Cambuston decision in *Federal Cases Comprising Cases Argued in the Circuit and District Courts . . .* XXV, 274.

4. 9 *U.S. Stat.*, 929-930.

5. In *United States v. Sutherland*, Justice Robert G. Grier said the United States was bound by treaty and the Court had no discretion "to enlarge or curtail" the grants "to suit our own sense of propriety or defeat just claims. . . ."

6. Acts of July 4, 1836, and June 2, 1858, 5 *Stat.*, 126 and 11 *Stat.*, 294. On five separate occasions Congressional committees passed upon the Dubuque-Chouteau claim for 148,000 arpents in Missouri-Iowa; four reports were favorable and the fifth was a minority favorable report.

7. On the adjudication of private land claims in the older states see Henry L. Coles, Jr., "The Confirmation of Foreign Land Titles in Louisiana," *Louisiana Historical Quarterly*, 38 (October, 1955), 1 ff.; Paul W. Gates, "Private Land Claims in the South," *Journal of Southern History*, 22 (May, 1956), 183 ff.; Paul W. Gates, *History of Public Land Law Development* (Washington, 1968), 87 ff.; Francis Philbrick, *Laws of Indian Territory, 1801-1809*, and *Laws of the Illinois Territory, 1809-1818* (Illinois Historical Collections, vols. 21 and 25, Springfield, Illinois, 1930-1950) in their long introductions contain much information on the adjudication of claims in Indiana and Illinois.

8. 9 *Stat.*, 631.

9. Ogier rarely prepared written opinion with citations to legal precedents as did Hoffman, and the basis of his decisions is more difficult to grasp. The inventory of his estate of 1861 showed that he was in debt to Abel Stearns for $4,250 with interest of 1½% a month. Two of Stearns' ranchos–Laguna for 13,388 acres and Alamitos for 28,027 acres–were confirmed by Ogier in 1856 and 1857. George Cosgrave, *Early California Justice: The History of the United States District Court For the Southern District of California, 1849-1944* (San Francisco, 1948), 33 ff.

Ogier was also in debt to the amount of $1,800 to John Parrott, a prominent banker of San Francisco. Pacificus Ord, Federal District Attorney for the Southern District of California, and Ogier were in Washington, urging the Attorney General to allow the dismissal of all land cases confirmed by Ogier. Attorneys of claimants appearing before Ogier early learned that gifts of brandy, sherry, and cigars to him and to Ord eased the path to victory. Parrott to Stearns, June 7, 1861, and Ord to Stearns, September 4, 1856, Stearns MSS., Huntington Library; Frederick Billings to Halleck and Peachy, January 8, and 26, 1857, UCLA.

The most serious charges against Ogier were not his borrowing from persons

bringing claims before him, his fondness for liquor and acceptance of gifts from attorneys, his absence while lobbying in Washington in behalf of claimants, but were his predilection in favor of claims, his inertia, his unwillingness to write out more than a few of his decisions, his approval of a two league claim without even reading the decree, and his contradictory decrees. Copy of letter of David Jacks, November, 1866, to C. Cole, Huntington Library; *San Francisco Daily Evening Post*, January 8, March 8, and April 20, 1876.

10. Although the three appointments were made in September and October, 1851, the Board did not have a quorum in California until January 5, 1852. *House Reports*, 33 Cong., 2 Sess., serial 808, no. 1, p. 2.

11. There is much material on the Virginia land claims and Hall's investigation in the McCullough Foundation, North Bennington, Vermont. See also *House Reports*, 26 Cong., 1 Sess., vol. 2, serial 371, no. 436.

12. William Garrett, *Reminiscences of Public Men in Alabama for Thirty Years* (Atlanta, 1872), 169-170.

13. Letter of J. L. Folsom, administrator of the huge Leidesdorff estate, January, no day, 1852, to A. C. Peachy, Leidesdorff Papers, Huntington Library.

14. *Cong. Globe*, September 11, 1850, 31 Cong., 1 Sess., 1776. Fillmore had earlier appointed Joseph R. Ingersoll of Pennsylvania, Austin F. Hopkins of Alabama, and James Harlan of Kentucky as comissioners, but all had declined. *Senate Executive Journals*, 8:310, 315.

15. S. G. Griffin, *History of the Town of Keene* (Keene, New Hampshire, 1904), 664-667; *Senate Executive Journals*, 8:450-451. One Whig from Maryland opposed and the antislavery Democrat from New Hampshire, Hale, supported the nomination. Gustavus Henry of Tennessee was nominated on August 31, 1852, to replace Wilson but declined to serve, and John L. Helm of Kentucky was nominated for the spot on February 14, 1853, but was not confirmed. *Sen. Ex. Journals*, 8:451 and 9:34.

16. James T. Stratton in General Land Office, *Annual Report* (1875), 286.

17. *Organization, Acts and Regulations of the U.S. Land Commissioners for California, with the Opinions of Commissioners Hall and Wilson on the Regulation to Allow Adverse Claimants to Intervene in the Original Cases; and Commissioner Thornton's Opinion Dessenting from that Regulation*, listed in R. E. and R. G. Cowan, *Bibliography of the History of California* (San Francisco, 1933), 374; Hiland Hall, February 14, and 17, 1852, to Trenor Park, Hall-Park-McCullough MSS., John McCullough Mansion, North Bennington; W. J. Eames, October 27, 1852, to Larkin, *Larkin Letters*, IX, 149. Harry J .Thornton, October 25, 1862, to Hall; Joseph P. Thompson, January 15, 1853 to Abel Stearns, Stearns MSS., Huntington Library; *San Francisco Herald*, October 10, 1852.

18. *Cong. Globe*, 32 Cong., 1 Sess., July 20, 1852, p. 1852.

19. *Alta California*, September 20, 1852. Campbell resigned after serving for a year and was replaced by Seth B. Farwell of Illinois. *Senate Executive Journal*, IX, 62, 67, 326.

20. *The Californian* of December 24, and 30, 1852, expressed the fear that the confirmation of the Frémont-Mariposa claim by the Commission on December 27, 1852, assured that every claim would be confirmed. The paper called the government law agent Robert Greenhow, a "mere cipher," who was unable to "adduce any evidence of a rebutting or explanatory character," and doubted that with the "pertinacity" with which claims were rushed and the favorable rulings of the Commission any claims would be rejected unless its course were arrested Greenhow

may not have been an able lawyer, but he was one of the few officials who was familiar with the Spanish language, having been a translator in the Department of State, as well as a prolific writer of histories.

21. Hoffman's summary of the 70th case, which was rejected by the Commission, may be in error for it shows the decision was arrived at in an unusually rapid time. My guess, which I have not been able to confirm, is that the decision in the Temescal case was rendered after the Whigs had left the Commission and that Hoffman made an error in chronology, as he did in more than one instance. A report of the House Committee Public Lands shows that 72 cases had been decided by April 23, 1853, but I cannot reconcile that figure with Hoffman's summaries of each individual land claims. *House Reports*, 33 Cong., 2 Sess., serial 808, no. 1, p. 3.

22. I have followed the previously cited *House Report*. Theodore H. Hittell, *History of California* (4 vols., San Francisco, 1898), iii, 695, summarized the entire work of the Commission as follows: 514 claims confirmed, 280 rejected, 19 discontinued.

23. Larkin said the new board was "very hard" on titles, causing him to look up more witnesses that he had thought necessary. Letter to John Bidwell, October 30, 1853, Bidwell MSS., California State Library.

24. June Barrows, "An American Chronicle" (McCullough Art Gallery, North Bennington, Vermont), 225; George P. Hammond, *The Larkin Papers* (10 vols., Berkeley, California, 1951-1964), ix, 145, 234; Hoffman, *Reports of Land Cases, passim;* [James Wilson] *Claim of Senor Don José Y Limantour to Four Leagues of Land in the County Adjoining and Near the City of San Francisco, California* (San Francisco, 1853). The *Sacramento Bee*, a pro-settler paper, reported on December 6, 1859, that Thomas Browder and James Wilson had been asked to leave Santa Cruz County within three days under penalty of personal chastisement. Browder was charged with searching for defects in titles, purchasing adverse claims for speculative purposes, and blackmailing owners. "This is the meanest business," worse than being a hangman, it declared. By taking up with Limantour, Wilson had incurred the wrath of land owners both in and outside of San Francisco.

25. A number of claims were submitted by attorneys such as Halleck, Jones, Strode, Peachy, and Carpentier to protect their share as fee and were generally not pressed beyond the Commission. A few claims were filed and numbered but were never taken up by the Commission. Still others were not filed before the Land Commission went out of existence and do not appear among the 813.

26. Hoffman, *Reports on Land Cases*, 116-124; *Appendix to Journals of the Senate and Assembly*, 16th Session, 1866, vol. iii. Pico's land agent is reported to have said in 1857 that the lands would not be sold over the heads of settlers but mentioned no price for which they could buy their tracts. *Sacramento Union*, January 21, 1857.

27. Principal reversals were Vallejo-Suscol (60 leagues), Vallejo-Yulupa (3 leagues), Teschemacher-Lupyomi (16 leagues), Sutter (22 leagues), 11 leagues each of Andrés Pico, Henry Cambuston, and José Castro, and the three league Bolton claim in San Francisco. The total acreage in these 21 claims in which the Supreme Court reversed Hoffman is 891,320. This is aside from the influence of Stanton and Black before Hoffman in the district court. In a somewhat bombastic report justifying the large expenditures involved in sending Stanton and James Buchanan, Jr., to the Pacific Coast Black summarized the weaknesses of the claims he and Stanton had persuaded the courts to overthrow. *House Executive Documents*, 36 Cong., 1 Sess., vol. 12, serial 1056, no. 84, 30-40. This was printed in full except for the accounting

of funds in *Alta California,* June 30, 1862. Black held both Hoffman and District Attorney Peter Della Torre in high regard but was aware that it was the laxity of former district attorneys which had permitted claims to gain approval of the Commission and the district court. Of Hoffman he said: "The high character of Judge Hoffman, for ability as well as of integrity, entitles every opinion of his to profound respect."

It was in the report just cited (p. 39) that Black complained that the act of May 18, 1858, "for the prevention and punishment of frauds in the land titles in California" had not been enforced "against any of the numerous persons" who had falsely made, altered, forged, or counterfeited documents submitted for land claims or who should submit claims based on such spurious documents. Possibly the punishment for such action—up to ten years in prison and $10,000 fine—may have detered prosecution, but Black thought the time would come "when some of the guilty parties should be made to feel the majesty of the Law."

Though compelled to accept Chief Justice Taney's relaxation in the Frémont-Mariposa case of previous requirements in the handling of private land claims, Judge Hoffman was never intellectually convinced of its soundness. When, therefore, in the Cambuston case Justice Samuel Nelson of the Supreme Court rejected his grounds for confirming the claim and remanded the case back to the district court for further consideration, Hoffman, perhaps smarting from the reversal, rendered one of his most careful decisions on land claims. The issues Nelson had raised (61 *U.S. reports* 64) about the claim were easily disposed of, though at considerable length, and he then found for rejection the fact that Henry Cambuston, a Frenchman, had not been naturalized and under Mexican law was not entitled to receive a direct grant from the government. Hoffman appended to his second Cambuston decision a fascinating note indicating his reasons for rejecting the Frémont claim and showing how the Taney decision overturning his position had involved the courts in the greatest of difficulties in separating questionable claims having the least equities from the sounder and more equitable claims. Hoffman was aware, as most writers on California land claims have not been, that Taney's decision permitted the approval of a number of major claims that by previous precedents should have been rejected. For this reason the Frémont decision became "the most important and the leading case on this branch of the law, and has exercised a controlling influence on all subsequent decisions of this court." By 1858 and 1859 that precedent had been greatly weakened under the powerful blows of Attorney General Black and special attorney Edwin M. Stanton, but was to be revived after 1863 by the legal sophistries of Justice Field. For the second Hoffman decision and the note see *25 Federal Cases Comprising Cases Argued and Determined in the Circuit and District Courts of the United States,* 266-277.

28. Hubert Howe Bancroft, *History of California* (7 vols., 1888), VI, 576-581; Josiah Royce, *California from the Conquest in 1846 to the Second Vigilance Committee in San Francisco* (New York, 1948), 360-383. Robert Glass Cleland, *History of California: The American Period* (New York, 1922), 411-412, and *Cattle on a Thousand Hills: Southern California, 1850-1888* (San Marino, 1951), 40; John Walton Caughey, *California* (Engelwood Cliffs, New Jersey, 1964), 309.

Two recent writers—Andrew F. Rolle, *California* (New York, 1963), and Leonard Pitt, *The Decline of the Californios* (Berkeley, 1970), have confused the issues revolving around the Mexican grants. Rolle seems to offer Henry George's indictment of the California grants (which he slightly garbles and attributes to *Progress and Poverty,* published in 1880, when actually it is from George's *Our Land and Land*

Policy, published in 1871) as an alternative to the judicial test of the claims in the Act of 1851. But Rolle did not read his Henry George carefully. George was no advocate of easy confirmation of the full acreage of the claims. He felt that the claimants should have patented to them only the immediate improvements they had made on their claims, which in most cases would have been only the land immediately around their headquarters, if they had any. For the balance of their claims they would be paid a small consideration and the land should become a part of the public domain where it would be open to settlers. George was troubled at the long delay in approving the claims which he blames for the owners not getting "any commensurate benefit" from them. Actually the claimants had full use of all claims, including those subsequently rejected, until the court of last resort had spoken, as he later shows. George did express the usual sympathy for the original claimant because of the delay in gaining patents, but only because he felt that the combination of inadequate capital to develop the land and rising tax burdens would have compelled them to sell to developers.

Pitts' account also shows considerable confusion. He thinks the five years the Land Commission took to adjudicate the 813 cases was "far too long," whereas the facts suggest that more time should have been given to the matter. He fails to recognize that both Larkin and Stearns were misled into taking an interest in dubious and ultimately rejected claims. His chief failure is in assuming that the grants at the time the Land Commission began to function were in the hands of the *Californios* (equated with Mexicans), whereas it is shown herein that 133 were granted to non-Mexicans and 213 originally granted to Mexicans had been conveyed to non-Mexicans. His data on page 118 is hopelessly confused. Another recent writer has even accused Caleb Cushing and Jeremiah Black, successively attorneys general in the southern, pro-slavery dominated administrations of Franklin Pierce and James Buchanan, of being "captivated" by the squatter influence and assuming that "all California titles were spurious." Frank Stanger, *South From San Francisco: San Mateo County, California* (San Mateo, 1963), 48.

29. *Biddle Boggs v. Merced Mining Co.*, and *Moore v. Shaw*, 7 *California Reports*, 328; 14 *California Reports*, 380; and 17 *California Reports*, 199; Robert McCloskey in Leon Friedman and Fred L. Isreal, editors, *The Justices of the United States Supreme Court, 1789-1969, Their Lives and Major Opinions* (4 vols., New York, 1969), II, 1072.

30. In Thompson & West, *History of Santa Barbara & Ventura Counties, California* (Howell-North reprint, 1961), 213, it is stated that Stephen J. Field, then a circuit judge of California, held 521 shares in the San Buenaventura Mission tract of 48,822 acres along with other influential Californians, including Timothy G. Phelps, collector and later one term member of Congress (195 shares), Edward F. Beale, ex-U.S. Surveyor General (300 shares), and Jerry S. Black, ex-U.S. Attorney General (130 shares). A move to have the U.S. Attorney General examine the title of San Buenaventura Mission in the Senate failed of adoption.

31. Stephen J. Field, *Personal Reminiscences of Early Days in California* (New York, 1968), 125.

32. *Alta California*, August 22, 1862.

33. Interestingly, in 1868 Davis delivered an opinion striking down the Roland 11 league claim on the San Joaquin River, with Justices Miller and Field dissenting. A year later Field, with Davis, Clifford, and Swayne dissenting, confirmed the Huecos claim of Roland and Hornsby which, if Field had had his way on the San Joaquin claim, would have given Roland a share of 31 leagues of land. As it was, his

joint right with other parties was confirmed to 20 leagues. In other cases it appears that some justices were reluctant to accept Field's broad interpretation of property rights in land claims. Field's insistence that the claimant had full right to the sole use of the land in his claim, no matter how notoriously defective it was, until the courts rejected it was most resented by land hungry Californians and made him highly unpopular in California.

34. *Sacramento Bee*, July 28, 1857.

35. Paul W. Gates, "California's Embattled Settlers," *California Historical Society Quarterly*, XLI (June, 1962), 99-130, and "Pre-Henry George Land Welfare in California," *C.H.S.Q.*, XLVI (June, 1967), 121-148.

36. J. W. Mandeville, San Francisco, July 12, 1860, to Joseph S. Wilson, Surveyor General Files, National Archives.

37. *Senate Reports*, 43 Cong., 2 Sess., serial 1632, no. 666; *San Francisco Daily Evening Post*, February 19 and 28, 1876, Helen D. Crystal, "The 'Tolenas' or Armijo Grant," paper prepared in course of Professor H. E. Bolton, Bancroft Library. A similar case involved settlers who had been permitted to preempt their claims and pay for the land after they had resided on it for six and seven years, only to learn in 1865 that a patent for the Visitación rancho had been given to H. R. Payson for 5,473 acres, including the settlers' patented land. *House Reports*, 45 Cong., 2 Sess. (1878), vol. 4, serial 1825, no. 811.

38. *Alta California*, November 21, 1862.

39. Ogden Hoffman, *Reports of Land Cases*, 161.

40. *Alta California*, December 10, 1861.

41. Hoffman, *Reports of Land Cases*, 210; 63 *U.S. Reports*, 286. Jimeno's eleven league Jimeno rancho, which had passed into the hands of Larkin by the time it reached Judge Hoffman, was confirmed by Hoffman on July 5, 1855, just 44 days after the Land Commission had approved another grant to Jimeno, the four league Santa Paula y Saticoy in Santa Barbara County. It was then owned by J. P. Davidson. Neither district attorney nor judge in the Northern and Southern District noted the error in sanctioning more than eleven leagues in direct grants to anyone, and both were patented. The second of these Jimeno grants seems not to have been appealed, though had it been it would probably have made no difference for Judge Ogier was not inclined to raise questions. It was on such laxity by land agents, district attorneys, and the judges that some large claims got by without justification. Hartnell seemingly was the only grantee or holder of grants against whom the eleven league restriction was invoked.

Although Mexican law limited direct grants to eleven leagues, American courts were not finicky about allowing the acreage to run well over the 48,708 acre limitation. Thus the two direct grants to Nicholas A. Den in Santa Barbara County (San Marcos and Don Pueblos) were confirmed for a total of 51,118 acres instead of 48,708. There were numerous other instances. Although direct grants for ranchos were limited to eleven leagues, other grants for money were larger. It should be added that though numerous grants included the provision that they were not to be sold, the American courts completely disregarded this and confirmed as many as five assigned claims to the same individual (José de la Guerra), with total acreage running to more than 200,000 acres or up to 45 leagues.

42. Thomas O. Larkin prepared a list of 285 British and American citizens who resided in California prior to 1840 A hasty inspection of the list reveals that at least

35 grants were either made to persons on the list or were acquired by them. John A. Hawgood, *First and Last Consul Thomas Oliver Larkin and the Americanization of California* (San Marino, 1962), 109-118.

43. With some exceptions I have relied on H. H. Bancroft, *Register of Pioneer Inhabitants of California, 1542-1848* (now conveniently published separately from his great *History of California*).

44. Here and elsewhere in this paper I have followed Bancroft in not being able to determine that the three grants were not made to the same John Roland and partners. See his *Pioneer Register and Index*, 702.

45. *United States v. Throckmorton*, 98 *U.S. Reports*, 61; *Alta California*, June 1, 1876. The case against the Sausalito patent was dismissed partly on the technical ground that the Attorney General of the United States, rather than the district attorney was not a party in it.

46. Donald Munro Craig, editor, *William Robert Garner, Letters From California, 1846-1847* (Berkeley, 1970), 181.

47. A check of Sonoma County claims, as shown in *History of Sonoma County* (San Francisco, 1880), 146-159, reveals that 29 claims were presented by non-Spanish speaking people and 15 were presented by Spanish speaking people.

48. Castine in the *Sacramento Union*, January 21, 1863, February 27, 1864, and March 22, 1865.

49. David O. Shattuck, the attorney for the claimants was apparently the petitioner asking for additional time in which to submit the claims. *House Reports*, 33 Cong., 1 Sess., January 26, 1854, serial 742, no. 70. Act of February 23, 1854 10 *U.S. Stat.*, 268. As late as 1884 only 7 of the Napa subdivisions had been confirmed and Congress was considering legislation that would make possible the final settlement and acceptance of the boundaries of the remaining 22. *House Reports*, 48 Cong., 1 Sess., vol. 2, serial 2254, no. 360.

50. Act of July 17, 1854, 10 *U.S. Stat.*, 784; *Stockton Weekly Democrat*, February 7, 21, 28, 1858. Juan M. Luco, who with José L. Luco was seeking confirmation of the Ulpines claim, wrote Abel Stearns on November 18, 1857, stating that he had an abundance of pasturage and proposing Stearns enter into a partnership with him for the pasturing of 1500 head of cattle. Stearns MSS., Huntington Library.

51. 64 *U.S. Reports*, 543.

52. *Senate Reports*, 37 Cong., 2 Sess., April 3, 1862, serial 1125, no. 31; Act of April 25, 1862, 12 *U.S. Stat.*, 902; 67 *U.S. Reports*, 598; Bancroft Scraps, 43:248.

53. Paul W. Gates, "The Suscol Principle, Preemption and California Latifundia," *Pacific Historical Review*, 39 (November, 1970), 453 ff. Since writing the story of Suscol, Justice Stephen J. Field, *Personal Reminiscences* (189-190) has come to my attention, in which he expressed his malignant feeling against public and private individuals with whom he had been in contention. Representative George W. Julian, a principal leader in the movement for free homesteads and defender of settlers against spoilsman trying to take advantage of public land laws to engross large areas, was one against whom Field's venom was expressed. Julian had led the defense of the settlers on Suscol, had shown how the land office decisions had been contrary to law Vallejo purchasers in later actions and Field was greatly troubled that out of the but had failed to prevent the adoption of the Suscol Act of 1863, giving to the buyers of the Vallejo title the right of "preempting" the land they claimed in unlimited amounts. Julian was critical of the Supreme Court for upholding the title of the

Suscol difficulty a memorial was introduced in the House calling for his impeachment. This scarcely justified, however, his saying it was generally believed that Julian, in the event of success, was to have a portion of the land saved for settlers. *Senate Journal*, 42 Cong., 2 Sess., February 12, 1872, 318.

54. The three special acts applied to the buyers of the Galbreath-Bolsa de Tomales claim, the Pico-Mission San Jose claim, and the Brown-Laguna de Santos Calle claim. 13 *Stat.*, 136, 372 and 534; 14 *Stat.*, 218. I have not yet been able to work out completely the many entries of land or attempts at entering land the Act of 1866 permitted on rejected claims. Buyers of the six league Samuel J. Hensley claim (Aguas Nievas) were able to purchase government title to tracts ranging from 157 to 436 acres and the heirs of Robert L. Carlisle 8,701 acres near Gilroy; at the same time the three claims for which special statutes were enacted went to the earlier buyers of the claimants' title. On the other hand, the Luco right to sell their huge Ulpines claim and for their buyers to repurchase from the United States was denied by the local land officers, possibly because much of the land had already been selected by the State and acquired from it by the influential J. F. Houghton. Luco continued to sell, however. *Sacramento Union*, May 11, 1867, and Bancroft Scraps, 43:187.

55. Lobbyists began their efforts in Congress in 1863: Bancroft Scraps (Bancroft Library), 43:135. The conflicting claimants for Arroyo de San Antonio finally managed to settle their destructive conflict and began a campaign to induce Congress to reopen their claim and allow it to be tried again in the district court. Their activities deeply troubled the people of Petaluma which was laid out on the tract who feared they would have all their titles upset. The California Senate adopted a concurrent resolution urging the defeat of the Latham Bill but it was not adopted by the House. Bancroft Scraps, 43:138. Finally, in 1872, a measure providing for a new trial of the claim was adopted, but in the event of confirmation, the owners were to be given scrip of a unique character because it could be located on any public land not otherwise claimed or reserved: 17 *U.S. Stat.*, 649, Gates, "California's Agricultural College Lands," *Pacific Historical Review*, XXX (May, 1961), 114 ff.

56. Parsons had been a state district judge for a short time and had attacked the liberty of the press as licentious and had been a leader of the Bulkhead Bill lobby which had made him unpopular in San Francisco. John T. Shuck, *History of the Bench and Bar of California* (Los Angeles, 1901), 476-478. Thomas R. Bard to John R. Green, August 4, 1867, in Historical Society of Southern California, *Publications*, X (1915-1917), 62; W. H. Hutchinson, *Oil, Land and Politics: The California Career of Thomas Robert Bard* (2 vols., Norman, Oklahoma, 1965), 1; map on 66, showing the location of the owned and leased ranchos.

57. Henry N. Crop, *Public Land Laws . . . With the Important Decisions* (Washington, D.C., 1875), 591 ff.

58. Thompson & West, *History of Santa Barbara and Ventura Counties*, 201, holds that Prietos should have been rejected because of conflicting and inadequate documentation.

59. *Cong. Globe*, 41 Cong., 2 Sess., July 6, 1870, 5241-5243.

60. Hutchinson, *Oil, Land and Politics*, I:72.

61. Commissioner of General Land Office, *Annual Report*, 1886, p. 25.

62. *Congressional Record*, 45 Cong., 3 Sess., January 17, 1879, p. 533; Act of January 29, 1879, 20 *Stat.*, 593. In the Stearns MSS. there is a letter in Spanish of Pablo Apis, Temecula, August 10, 1852, to Stearns about livestock and clothing Apis wished to purchase

63. Albert Dibblee to A. T. Britton, November 7, 1870, March 31 and July 27, 1871, Dibblee MSS., Bancroft Library.

64. Smith & Redington to Albert Dibblee, February 4, 12, August 2, 1876; Thomas B. Dibblee to Albert Dibblee, February 16, and March 22, and 31, 1876; *San Francisco Daily Evening Post*, March 21, 1876.

65. Dibblee to Albert D. Dibblee, April 29, 1876.

66. To A. Dibblee, March 22, 1876.

67. *San Francisco Daily Evening Post*, April 10, 17, 20, 28, June 2, 7 12, 1876; *In the Matter of the Rancho Cañada de Guadaloupe La Visitación Y Rodeo Viejo. Argument of Mr. Edmond L. Goold in Resistence of the Application to Institute Proceeding in Chancery to Cancel Patent* (Washington, 1876), as given in R. E. Cowan, *Bibliography of the History of California*, ii, 343; William S. Robertson, *Iturbide of Mexico*, (New York, 1968), 304, 305.

68. *House Reports*, 45 Cong., 2 Sess., 1878, vol. 4, serial 1825, no. 812.

69. *Senate Reports*, 45 Cong., 2 Sess., 1878, serial 1789, no. 148. Juan Cordero, who was listed in the census of 1860 as having land worth $1,000 and livestock worth $7,600 but whether he was Juan C. who was one of the heirs of Miguel is not clear. Thompson & West. *History of Santa Barbara and Ventura Counties*, 122; *San Francisco Daily Evening Post*, March 21, 1876.

70. Dibblee, to Albert Dibblee, June 20, 1878.

71. James K. Redington to Dibblee, March 18, May 10, and August 13, 1878.

72. The McGarrahan-Panoche Grande claim probably received more attention of Congress than any other private land claim. For discussions on the bill to allow appeal to the Court of Claims in the second session of the 52nd Congress see the *Congressional Record*, variously from 136 to 630. Robert J. Parker, "William McCarrahan's 'Panoche Grande Claim,'" Pacific Historical Review, 5 (September, 1936), 212 ff.

73. General Land Office, *Annual Report*, 1887, 545-546.

74. *San Francisco Daily Evening Post*, July 6, 25, 1876. As late as 1888 and 1889 Senator W. M. Stewart of Nevada introduced a harassing resolution calling upon the Attorney General to provide the Senate with information on "suits to vacate land patents," mentioning particularly Raymundo, Pulgas, Buri Buri in San Mateo County, Corte de la Madera Presidio, and Cañada de Guadalupe Visitación y Rodeo Viejo in San Francisco County. *Senate Journal*, 50 Cong., 1 Sess., serial 2503, pp. 541, 837, 852 and *Senate Journal*, 50 Cong., 2 Sess., serial 2609, 113.

75. *Cong. Record*, 45 Cong., 3 Sess., 1878-1879, 1088, 1092, Luttrell charged that Timothy G. Phelps had acquired 2,183 acres of the disputed land stated to be worth from $250 to $500 an acre and when in Congress in 1861-1863 had used his influence with Attorney General Edward Bates to dismiss an appeal to the Supreme Court in opposition to the survey. Bates had dismissed the appeal it was said in the fear that without so doing so California might join the confederacy. The charge may be far fetched but Californians had it in for Phelps who had led the fight for the Suscol bill, discussed above.

76. This latter point is brought out in the *Annual Report* of Commissioner Willis Drummond of the General Land Office, 1872, p. 64. Drummond was convinced that if the section requiring the claimant to pay for the survey were repealed and the government proceeded speedily to make the surveys the settlement of the private land claims would be materially advanced.

Malcolm Edwards

Free lance writer whose special interest is Western history.

"Substantial, Fire-Proof Edifices . . ." Made So by the Marvelous Invention of Iron Door and Window Shutters

AN EASTERN GREENHORN, a Gold Rush story relates, took lodgings in a mining town hotel and after surveying the premises inquired what the tenants could do in case of fire. "Jump out your window and turn left," the desk clerk replied. Safety lay in sleeping light and outrunning danger.

Fire was a presence and a promise in the nineteenth century mining camps scattered from Montana's barren slopes to the timbered foothills of the California Sierras. The cramped, hurriedly built, wooden towns that rose full grown wherever mineral riches were found often disappeared as quickly in a fury of smoke and flame. Sparks and fire from lanterns, cinders from the pipes and cigars of carefree smokers and from open hearths were scattered by accident or design to the tinder structures huddled on narrow streets.

The communities that mothered the California mines were not immune. Flames that devoured substantial portions of San Francisco knew no season. The first came on Christmas Eve of 1849, another May 4, 1850, and others in May and June of 1851. It appeared to the unacquainted that the community's citizens followed two major occupations—firefighting and reconstruction.

In a two-year period in the early 1850's, Sacramento was visited by five devastating fires, but while that may seem excessive, California's mining towns and camps appeared to take it as a challenge. A large section of Marysville was destroyed in 1851. An important part of Georgetown vanished during a summer blaze in 1852. Columbia was swept by fire on July 10, 1854, and, in something of an anniversary observance, burned again on that same date in 1857, and once again the following month. A fire at Hangtown on April 15, 1856, left hardly enough standing to build a proper gallows. Scores of other major and minor conflagrations singed or scoured scores of other camps and towns, and fire protection became an obvious matter for social concern.

While many of the miners in California's gold country had come from metropolitan areas and brought at least a visual acquaintance with firefight-

ing methods and apparatus, the answers to the problem were elusive. Fire-fighting companies were organized but their effectiveness was often limited by their equipment, by charters which forbade them to extinguish flames eating at the property of non-subscribers, and by the combustible character of the buildings they sought to save.

A more effective contribution was made as settlements took on a more permanent posture and essential or properous business houses made a shift from wooden walls to stone or brick. Fires came, and ". . . substantial, fire-proof edifices . . ." rose from the ashes.

While brick was described by a contemporary architect as ". . . the best fire retardant material for walls . . .," masonry buildings had their failings. Their roofs were generally flammable materials—shingles, or wooden planks covered with a waterproofing pitch or tar. At the same time, windows and doorways, glassed or open, provided no protection from fires burning intensely nearby.

What are believed to be the oldest photographic views of Gold Rush San Francisco, dated at late 1850 or early 1851, document one prosaic solution to the flat roof-top problem. Water barrels were spaced around the perimeter of a building's roof, ready to flood the surface if fire approached.

Another equally simple answer appeared at Columbia. Flat roofs on masonry buildings there were covered with a layer of sand, in turn sheathed by metal sheeting.

The best that could be done for slope roofs was to sheet them in metal.

Merchants turned to iron shutters to minimize the dangers of external fire entering a building through doors or windows. The practice, followed in Europe and in the eastern United States during the mid-part of the nineteenth century, was imitated widely in Gold Rush California. San Francisco's commercial district boasted several brick structures with iron shutters at the beginning of the 1850's, including the offices of Sam Brannan's *San Francisco Herald*; and the idea, once landed in San Francisco, soon made its way inland to Sacramento and Stockton, and just as quickly into the mining country.

A lithograph of 1854 Columbia shows a number of buildings fitted with iron shutters, including the Towle & Leavitt Building, the Jackson Store, and Donnell & Parsons establishment, and a newspaper account of the August, 1857, fire comments that tradesmen shut their iron shutters as the conflagration spread. Alas, iron doors or not, the brick stores of Donnell & Parsons and A. Leavitt perished in the blaze.

Similar illustrations of Sonora and Mariposa in the 1850's indicate several buildings in each community with iron shutters. In each of these towns and camps, the shutters first installed to block fire were easily adapted to discourage intruders. By adding simple, husky locks to the main entrance and by barring windows and other doors, a merchant or banker could provide

some protection for his property when he was absent. Merchants found, too, that shutters provided a fine surface for sign painting. Inspection of faded commercial messages provides pieces in the genealogy of building ownership and function. And, as an aside to quality, the shutters' durability is a testimonial to the richness of ores used in the mid-nineteenth century in the manufacture of iron.

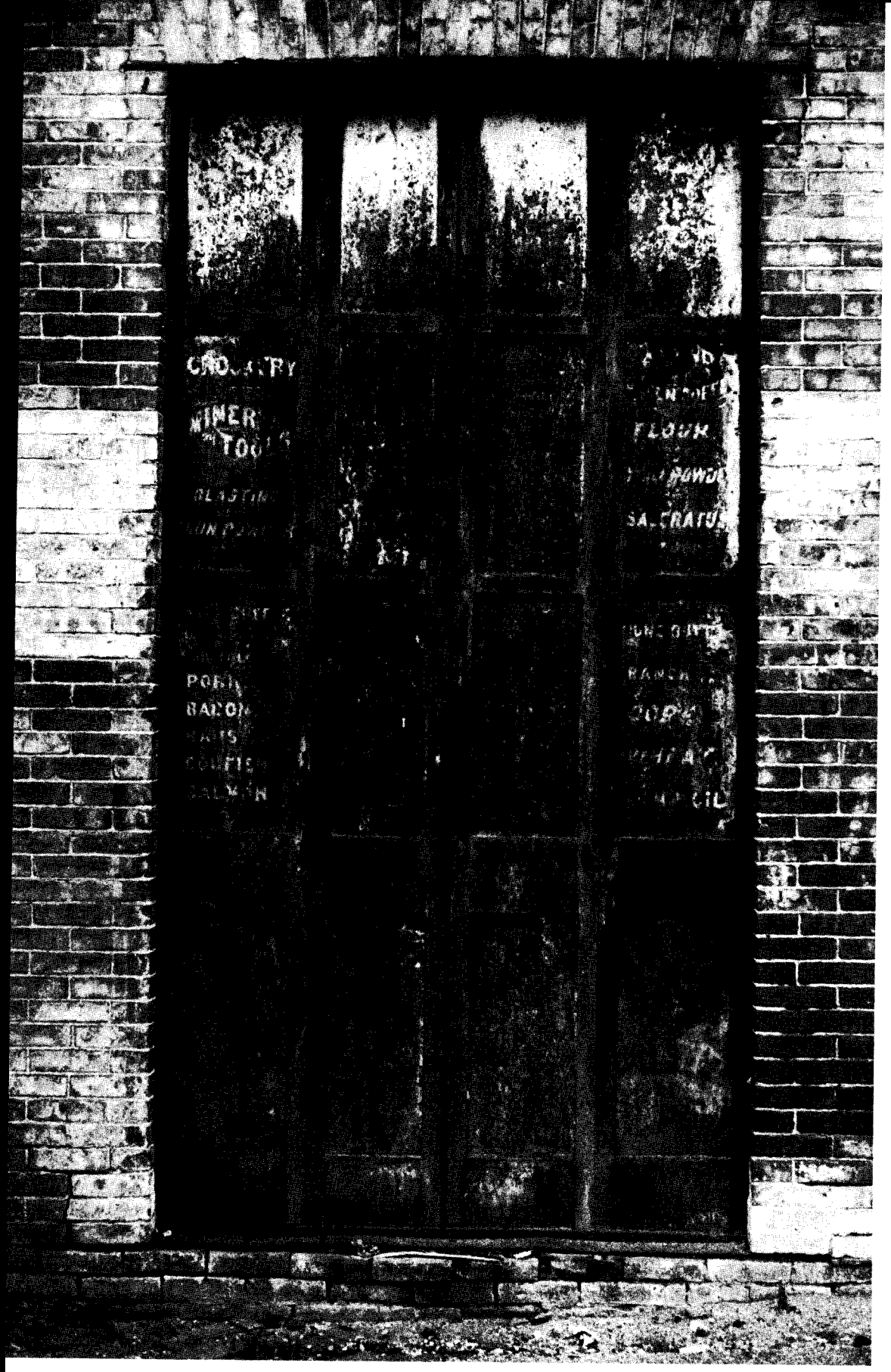
If the remains in California's southern mining communities are indicative, most shutters were simply designed and fashioned from a sheet of 3/32 to 1/8-inch thick iron in panels 12 to 18 inches wide and in heights dictated by the dimensions of the door or window. Panels were hinged in sets of two when the opening width exceeded two feet. An iron bar—dimensioned 1/4-inch thick and 1 to 1-1/2-inch wide—was riveted in a band around the individual panels as a stiffener, and a similar bar was riveted in a horizontal position across the panel whenever required to provide additional strength. These iron bands were usually placed on the outside, street front face at doors and the inside, room face at windows. Rivets used to attach stiffener bars and the simple pin hinge plates commonly measured 1/4-inch round.

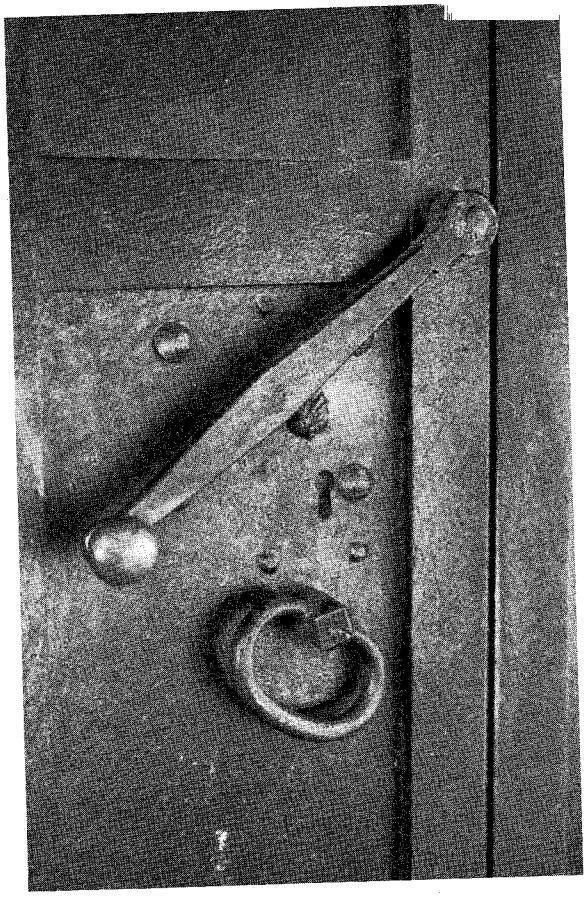
Two methods were routinely employed to hinge door shutters to buildings. An iron casement—incorporating 1/2-inch round hinge pins to hang the shutters—was built with flanges which could be mortared into the masonry wall. A second, less complicated means, requiring only the embedding of the hinge pin flanges in the building wall, was adapted frequently for doors and generally for window shutters.

Door thresholds also appeared in at least two styles. Iron sheet in 18-inch widths, sometimes serrated to provide traction for smooth soled boots and shoes, was often slotted to accept a vertical, sliding bar lock attached to the door and to assure a snug fit at the base of the door. The more common practice was to use brick, stone, or marble thresholds.

Latching devices varied widely and the most simple was a lever on the outside of a door, connected by a pin to an iron bar on the inside. When adjoining door panels were aligned, the lever could be used to swing the bar into brackets attached to the companion shutter. More sophisticated latches moved vertically-traveling iron bars, guided by brackets on the inside of a door panel, into slots in the threshold below and the casement above. Latches of these types, in a multitude of variations, were traditionally utilized on door panels at the establishment's front entrance. Other shutters were secured by a swinging bar which had its pivot point attached to one shutter in a pair. The panels were closed and the bar swung horizontally to fit into iron brackets, locking one shutter to the other. Iron handrings were frequently added to the outside of heavy door shutters to simplify moving them manually.

Iron shutters were manufactured in both San Francisco and Sacramento in the early 1850's, and many of standard or special size were shipped from





Simple latches operated by a handle on the door front served initially to bar iron door shutters. Locks (with a keyhole peeking out between the latch handle and the pull ring) were a generally adopted afterthought.

ıstings of merchant wares often appeared n iron shutters, providing the Mother ode country with an advance taste of ıter-day billboards. These doors are on a Iornitos building.

Single-panel shutters, with hinge pins embedded in the masonry wall, were a common fixture on business building windows. Murphy's Hotel, at Murphy's has notable samples indicating construction details.

those points to the mining country. Hooker & Co., with a factory at 117 and 119 California Street, San Francisco, in 1864, had established itself at 81 J Street in Sacramento eleven years before. In 1864 it advertised, ". . . our stock in hand, either at Sacramento or San Francisco, comprises every article in our line in demand by the *Miner*, *Farmer*, or *Mechanic*, . . ." an inventory which included iron sheeting, bars, and steel—the stuff of iron doors. The Phoenix Works, opened by Jonathan Kittredge at Nos. 6 and 8 Battery Street, San Francisco, in 1853, made up ". . . fire proof doors, shutters, bank vaults . . ." and claimed in 1864 that ". . . it has sent work of his manufacture to nearly every City and Town in California and Oregon. . . ." August Pritzel's San Francisco Iron Works announced from its quarters at 416 Market Street in 1863 that it was unexcelled as a manufacturer of iron doors, railings, balconies, and grave fences.

Along with these regional suppliers, there is evidence that special iron doors were made abroad. The extra heavy door on the Hornitos jail, for example, designed to hold fiery spirits rather than keep fire out, is a forbidding barrier 1/4-inch thick reputed to have come from England.

But, while the earliest shutters used in California's mining communities were probably supplied by iron works in the Bay Area, sheet iron, iron bar, and rivets were also available raw from stocks in San Francisco, Sacramento, and Stockton. Local blacksmiths ingenious enough to solve more complex shaping and mechanical problems were equal to making doors, hinges, pinions, iron bar casements, and thresholds. Early in the decade of the 1850's, very likely, the common practice was to patronize the local manufacturer.

In 1856, White & Wing advertised at Columbia as dealers in sheet iron ware, while Austin, Smith & Co. and Campbell & Hedden announced their talents as blacksmiths. Sonora had at least three blacksmiths during the same period, Jamestown four, and Shaw's Flat nine. At Murphy's Camp, H. Rogers stocked sheet, bar, iron, and steel, offering them at San Francisco prices, adding freight and commission, and performed job work in tin, sheet iron, or copper.

Several Gold Rush communities in the southern region—Jamestown, Columbia, Sonora, Coulterville, Bear Valley, Chinese Camp, Mariposa—are endowed with numerous iron shutters, and there are many and varied examples of style among the structures and remnants of structures still standing. The slight divergence in design tends to reinforce the theory that many shutters were made by the community blacksmith whose touch was individual rather than standard. And because shutters were used on buildings constructed as late as the 1890's in remote, down-at-the-heeels settlements, it is probable that they were often pirated from abandoned or destroyed buildings and adapted to the new.

An architectural writer remarked at the close of the nineteenth century

that, ". . . shutters of iron or metal covered wood . . ." did not fill the demand for protection from outside fires, and he observed that the shutters were ". . . usually not closed when the building is vacated. . . ." Considering the speed with which fire spread in gold camps, a building's occupants presumedly put their own safety ahead of the structure's and frequently departed without closing up when the cry "Fire!" was heard.

Whatever their inadequacies, iron shutters were a durable accessory which have become synonymous with gold country architecture and with masonry commercial structures dating to the later half of the nineteenth century in northern California.

By Anna Marie and Everett Gordon Hager

BOOK NOTICES

Old Newport: the Seaport Years (Newport Beach: Sandpiper Press, 1970. 48 pp. $2.95), edited by Ellen K. Lee and with delightful art work by Thelma Paddock Hope, introduces the reader to the nostalgic and carefree, happy days (1870 to 1889) as experienced by young Ramona Duarte at Newport Landing in Orange County. This is a good example of a combination of oral history, fine illustrations, and printing which emerges as a charming and lovingly prepared booklet of local history. The Newport Beach Historical Society and Public Library and the Newport Harbor Civic League deserve an appreciative salute for producing such an excellent biographical study.

Golden Mirages, by Philip A. Bailey (Ramona: Acoma Books, 1971. 354 pp. $9.95), is a special commemorative reprint edition covering the stories of the Lost Pegleg Mine, Three Gold Buttes and numerous yarns of and by those who knew the desert. This is a welcomed reprint of a now exceedingly hard-to-find 1940 edition and is in larger format and contains an added bibliographical note prepared by the late Mr. Bailey. Of especial interest are the 53 pages devoted to tales of La Frontera and of the prospectors of the Southwest Desert who combed and still continue to search the area so rich in lost mines and desert lore.

Leland Stanford: Man of Many Careers, by Norman E. Tutorow (Menlo Park: Pacific Coast Publishers, 1971. 332 pp. $9.95), provides a documented history of the times and many careers Stanford became involved in (law, politics, horseracing, viticulture) and of his specialized interests. Tutorow has assembled much material and many little known photographs which add much to this biography of the man who served California as its Civil War Governor. This is the first detailed biography of Leland Stanford and it is good that this first work, on so colorful a personality, should come from the pen of Professor Tutorow. It is an excellent documented history of the times.

Wilbur S. Shepperson's *Restless Strangers: Nevada's Immigrants and Their Interpreters* (Reno: University of Nevada Press, 1970. 288 pp. $7.00), is exciting reading. Nevada had the largest percentage of foreign-born of any state in America for two decades following the Civil War and Shepperson's efforts to evaluate the humor, distrust, enterprise, and conflicts, not to overlook the loneliness and despair of its residents, are succinctly presented. The splendid bibliography will lead the reader to other sources on what is easily one of the most interesting aspects of development of the Far West—what drew people to Nevada—how did they adjust to a foreign terrain —what entertainments did they devise to lessen their homesickness? Author Shepperson's previous works and numerous monographs indicate his wide knowledge of the local historical scene of Nevada.

Birthright of Barbed Wire· the Santa Anita Assembly Center for the Japanese, by Anthony L. Lehman (Los Angeles Westernlore Press, 1970 101 pp. $6 95), is a well

documented history of the eight-month period when a racetrack in Arcadia was used as an Assembly Center for the Japanese-American citizens prior to their relocation to inland centers during the early days of World War II. This is, indeed, a book for every thoughtful American to read.

Geologists and mining engineers will discover many interesting facets in this study on the life of *Andrew C. Lawson: Scientist, Teacher, Philosopher*, by Francis E. Vaughan (Glendale: The Arthur H. Clark Company, 1970. 474 pp. $10.00). Vaughan's biographical tribute to the former Chairman of the Department of Geology and Dean of the College of Mining at the University of California, Berkeley, fully indicates his great depth of understanding and appreciation of Lawson, the man, and of his many contributions in the scientific fields.

A Pictorial Memorial to the Wheels that Won the West will be found in *Western Wagon Wheels*, by Lambert Florin (Seattle: Superior Publishing Company, 1970. 183 pp, $12.95). You name it–they're all here: stage coaches, Conestoga wagons, buggies, 20-Mule team wagons, carretas, and the inevitable hearse, are all pictured and described in another photographic essay by the very busy and creative cameraman, Lambert Florin.

San Bernardino County Registered State Historical Landmarks, by Gerald A. Smith, L. Burr Belden, and Arda M. Haenszel (San Bernardino County Museum Association, 18860 Orange Avenue, Bloomington: 74 pp. $2.00), covers the points of historical interest in San Bernardino County. The Museum Commission was appointed to serve as the County's Historical Landmarks Committee and this well illustrated brochure covers twenty-six historical sites. Among the landmarks described are the San Bernardino *Asistencia*, the Mormon Stockade Site, the Santa Fe-Salt Lake Trail Monument, Mormon Trail Monument and Fort Benson, Searles Borax Discovery Site, and the National Old Trails Monument.

Trails of the Angeles: 100 Hikes in the San Gabriels, by John W. Robinson (Berkeley: Wilderness Press, 1971. 256 pp. $4.95), provides an all-year round invitation to southern Californians to explore as well as to discover precious areas of isolation and beauty still to be found in the San Gabriel Mountains. It is well illustrated and embellished with clear descriptions, including such information as "Easy," "Moderate," or "Strenuous," "seasons to travel," "when closed," length of hikes, and elevation gains. The chapter on "Man in the San Gabriels" will interest the history buff while "Hiking Hints" will please the ardent conservationist who may not need the "Hints" but will appreciate their inclusion to help prevent further destruction or vandalism of the delights yet to be found in the San Gabriels.

The Sign of the Eagle: a View of Mexico, 1830 to 1855, Letters of Lt. John James Peck, edited by Richard F. Pourade (San Diego: Union-Tribune Publishing Company, 1970. 170 pp. $14.50), is another worthy addition to the growing list of fine historical publications emerging under the directorship and editorship of Richard Pourade. Mexican War students will rarely find such a brilliantly illustrated collection of letters spanning the United States-Mexican period, a real bonanza for the historian, art historian, and collector.

Another set of letters from a later period in California history will be found in *Letters from California, 1846-1847*, by William Robert Garner (Berkeley: University of California Press, 1970. 262 pp. $8.95), edited with notes and a short biography of their author by Donald Munro Craig. Numerous illustrations, maps, and a fine bibliography add much to these unusual letters covering the political scene, natural resources, and economic prospects as well as the customs of the *Californios* before the Gold Rush. These rare and delightful materials, happily brought to light through the careful editing of Editor Craig, elicited the following remarks from Dr. George

P. Hammond, *Director Emeritus* of the Bancroft Library, "The Letters themselves are extremely interesting, and as a source material are of first-rate relevance and importance."

Charming Monterey appears in print once again in *Old Monterey County: a Pictorial History* (Monterey: Monterey Savings and Loan Association, 1970. 120 pp. *Gratis*). This publication is an excellently prepared local history published under the direction and through the generosity of a business firm which has long held a strong position in promoting worthwhile historical publications in Monterey County. This book was written by Robert B. Johnston and designed by Peter Volante; the illustrations, maps, and general format make this a fine contribution to the California scene and a valuable asset to the school and library systems of Monterey County.

The Seri Indians of Sonora, Mexico, by Bernice Johnston, (Tucson: University of Arizona Press, 1970. 16 pp. $2.50), is a beautiful and sensitive study, although a brief one, of the history and art work of the Seri Indians. The photographs in luscious color will introduce ardent collectors to a relatively untouched field of native American craftsmanship, especially in the finely carved ironwood figurines, the fascinating pottery, ceramic figurines, necklaces, and baskets.

County histories, filled with biographical studies and portraits of community builders or pioneer, once graced many a marble-topped table in mansion or farmhouse and still hold a never ending fascination for today's publisher and collector. With the reprint of Fariss and Smith's *History of Plumas, Lassen and Sierra Counties, California* (Berkeley: Howell-North Books, 1971. 688 pp. 123 illus., $20.00), librarians and scholars have the latest addition to the growing number of county histories reprinted by Howell-North. Howell-North Books has used sage judgment in the selection of historians or writers to prepare the added introductions to their reprint volumes. Without doubt W. H. Hutchinson was the best qualified to prepare the particular introduction for this work. Some of the famous early personages and residents of these three counties include Peter Lassen, Jim Beckwourth, "Squire" T. D. Bonner, and John Mackay, one of the Silver Kings of the Comstock.

Palm Canyons of Baja California, by Randall Henderson (Glendale: La Siesta Press, 1971. 71 pp. $1.95), is another addition to the long chain of interesting and informative small publications emerging from Walt Wheelock's La Siesta Press. Baja California and all its fascinating and intriguing aspects has become a lodestone for campers, jeepsters, jalopy drivers, and buggyites. Eight articles which originally appeared in Henderson's *Desert Magazine*, an introduction by Wheelock, and good illustrations make up this edition.

Certainly an integral part of any Baja California Library collection will be Helen Ellsberg's *Los Coronados Islands* (Glendale: La Siesta Press, 1970. 36 pp. $1.00). The islands, now a Mexican military post as well as a bird refuge, once served as vantage points for early day pirates and for rumrunners during the Prohibition Era. Mrs. Ellsberg presents legends, descriptions of birds, mammals, geology, and the history of these mysterious islands rising out of the Pacific, hugging the sea-boundary of California and Baja California. Although long publicized as the "Sentinels of the San Diego Harbor," they do not belong to the United States but are very much a part of Baja California and permission must be obtained from the Mexican Government in order to visit the Coronados.

Indian Talk: Hand Signals of the American Indians, by Iron Eyes Cody (Healdsburg: Naturegraph Publishers, 1970. 112 pp. $1.75), illustrated by Ken Mansker (a Flathead Indian artist) and with 150 photographs, is a worthwhile item for all ages. It is most educational and entertaining to become acquainted with the no-longer secret language of the Great Plains Indians Their hand signals are a part of nature itself.

Fort Supply, Indian Territory: Frontier Outpost on the Plains, by Robert C. Carriker (Norman: University of Oklahoma Press, 1970. 241 pp. $7.95), is an exciting and definitive study of the changing and all important role played by Fort Supply in subduing Southern Plains Indians. Professor Carriker has, through the medium of all available sources, as well as local newspapers and elusive personal letters, provided additional highlights about this supply frontier fort established in 1868 in the northwest Indian Territory by an order of General Philip H. Sheridan. The troops from Fort Supply helped to extend the army's control of the region, and its storehouses equipped Forts Reno, Elliott, and Cantonment. Later its personnel assumed the task of protecting reservation Cheyennes and Arapahoes from other tribes, from cattle and horse thieves, and from white cattlemen who encroached on reservation grazing lands. Fort Supply's final assignment was to supervise the opening of the Cherokee Outlett in 1893. This study will certainly serve as a fine model for any future studies on the life and times of the frontier forts of the West.

Delightful Journey: Down the Green and Colorado Rivers, by Barry Goldwater, with supplemental essays by Robert C. Euler and Carleton B. Moore, and O. Dock Marston serving as Special Consultant (Tempe: Arizona Historical Foundation, 1970. 209 pp. $15.00), is based on the 1940 river boat expedition of Goldwater and the diary kept and photographs he made. This is real arm-chair adventuring, more so when the adventure is so clearly and sensitively described. The deep love of country and keen appreciation of the efforts of the West's earlier explorers shines through this excellent study. Study? Hardly, this is an adventure in good reading and for the enjoyment of a beautiful melding of text and photographs graced with appropriate quotations from the writings of John Wesley Powell of Colorado River fame.

Grateful indeed is this reviewer that the earlier edition (of which only 300 mimeographed copies were made in 1940 for private distribution) has now been made available for a wider audience to share and enjoy. This was an unusual river boat trip in that it can never be duplicated again—either in description or scene. With the disapperance of the once lovely Glen Canyon and surrounding areas it is most fortutious to have Mr. Goldwater's diary put into the more permanent form of a highly readable and well designed publication.

Delta Country, by Ronald Dean Miller and Peggy Jeanne Miller (Glendale: La Siesta Press, 1971. 36 pp. $1.00), is good escapist reading for those trying to become untangled from traffic snarls and the hazards of city living. The Sacramento-San Joaquin River Delta encompasses 1,000 square miles of scenic rivers, sloughs, back-swamps, tules, and peat bogs. Stretching 24 miles east-to-west and 48 miles north-to-south this vast swampland comprises California's Delta Country. The number of cruisers and houseboats are increasing rapidly with the Delta coming into its own with a large number of people buying or renting houseboats and learning to enjoy a life of leisure time on the "Old" Sacramento River. The Millers have assembled pertinent facts as well as helpful hints not only for the "weekend warrior" but for the confirmed Delta Country "captain." One guarantee not specified in the Millers' *Delta Country* book is that it will not only heighten a bad case of "Delta Fever," but seriously encourage it!

Here is a wonderful book! *Boontling: an American Lingo with a Dictionary of Boontling*, by Charles C. Adams (Austin: University of Texas Press, 1971. 272 pp. $7.50) presents an admirable challenge to the linguist searching for a newer and more tantalizing manner in which to describe something. *Boontling*, a deliberately contrived jargon spoken extensively in the upper Anderson Valley of Mendocino County between 1880 and 1920 is well covered by Dr. Adams. The jargon, if you will, contained a basic vocabulary of more than 1,000 unique words and phrases and

nearly 300 specialized names for residents of the upper Anderson Valley and for the more prominent geographical features of the area. Though the lingo has ceased to play the important role it once had in Anderson Valley life, it is still remembered and spoken among old-timers and is now being revived by a younger generation who wish to cultivate the traditions of their valley forebears. Since "Boontling" is so intimately related to the valley itself and to the people who spoke it, it cannot be fully understood or appreciated without knowing the physical and social context, in some detail, of this unusual valley located 100 miles northwest of San Francisco.

A *diddle can* (a liquor container) was so named for a Dr. Diddle during times of local prohibition when he allegedly prescribed "blue grass for tongue cuppy kimmies" ("whisky for 'sick' men"). A *dom-gormin'* region (chicken-eating area) was any established picnic ground, while a *hornin-region* (drinking place) was a saloon! A *batter shack* was a bachelor's cabin. Readers of Dr. Adam's delightful study will certainly enjoy a *bohoik* (a loud, hearty laugh), as well as feel a closer empathy for *Boontling* when they finish perusing the unexpected bonanza of a uniquely different kind of dictionary.

Your *California Historical Society*, in 1957, introduced as *Special Publication Number 29*, the nostalgic reminiscences of Katharine Bixby Hotchkis, *Christmas at Rancho Los Alamitos*, printed by Lawton Kennedy and exquisitely illustrated by Clement Hurd. Within an all too short period this delightful narrative acquired an "out of print" status.

In response to many requests, the *Society* now introduces as *Special Publication Number 47*, a completely new edition of *Christmas Eve at Rancho Los Alamitos*, in a sharp, new format designed by Robert Weinstein, of Anderson, Ritchie and Simon, and illustrated by Gene Holtan (San Francisco: *California Historical Society*, 1971. 23 pp. $6.00 boards; $1.75 wrappers, plus tax).

With *Adobe Days*, by Sarah Bixby Smith, *Christmas Eve at Rancho Los Alamitos* will surely enjoy the premier ranking of being another juvenile American Classic.

Ever wish for an opportunity to discover the pastoral California once enjoyed before our present freeway and jet plane days? It is waiting for you within the slim 44 pages of *Trip With Father*, by Katharine Bixby Hotchkis (San Francisco: *California Historical Society*, 1971. $7.00 boards; $2.25 wrappers, plus tax).

The journey, a wonderful wayfaring by horseback from Piedmont to Long Beach, is well told. The three young Bixby daughters, along with a beloved cousin, Susanna Bryant (later Mrs. Susanna Bryant Dakin) participated in the adventurous and unusual horseback ride, under the guidance and leadership of their father, Fred Bixby, a colorful and knowledgeable horseman.

One can savor her pen-pictures of long stretches of wild coastline, the canyons and rural countryside, as well as the reactions of horses and riders alike on the lengthy 1916 trip through the then-serene heart of California.

Issued as *Special Publication Number 48*, and designed by Robert Weinstein, of Anderson, Ritchie and Simon, with illustrations by George Bartell, it will surely please and satisfy those so fortunate to secure copies of *Trip with Father*.

With enthusiasm and sincerity your reviewers urge readers to acquire these new publications of the Society, issued in a limited edition, for these are delightful keepsakes of the not-so-distant Californian scene.

The San Francisco Vigilance Committee of 1856: Three Views, by William T. Coleman, William T. Sherman, and James O'Meara, with a 16-page introductory historical-bibliographical essay, as well as a critical appraisal of some 42 primary and 36 secondary printed sources and edited by Doyce B. Nunis, Jr., (Glendale: The Westerners, Los Angeles Corral, P.O. Box 230, 1971. 181 pp $20.00), is an exciting

find because of the new materials which have been so carefully brought together by Editor Nunis. Limited to but 500 copies, this edition contains six portraits of major participants, a reproduction of the Committee's membership certificate, and the only known photograph of a group of Vigilance Committee members in uniform. Twenty-one known pictorial letter-sheets relating to the famed 1856 Vigilance Committee are added highlights as well as the numerous newspapers and periodicals providing over 200 sources of rich hunting ground materials for future and present Vigilance Committee historians.

In Robert G. Cowan's earlier Los Angeles study, *A Backward Glance: Los Angeles, 1901-1915*, the reader was introduced to a wealth of new and unique photographs. Another delightful booklet of an earlier-day Los Angeles now appears by Mr. Cowan, *On the Rails of Los Angeles: a Pictorial History of its Street-cars* (Los Angeles: *Historical Society of Southern California*, 200 E. Avenue 43, 1971. 44 pp. hard covers $6.50; stiff covers, $2.75, plus tax). The horse-car, cable car, the steam car, and the electric car are all depicted in the 40 original photographic reproductions.

An Earthquake Memoir, by Reverend Francis J. Weber (Los Angeles: Dawson's Book Shop, 1971. 20 pp. $5.00), is only 2⅞" x 2⅛" and bound in red buckram, but is a unique addition to the growing list of finely produced miniature book-items by this noted author. In the aftermath of the San Fernando Valley earthquake of February 9, 1971, which measured a dramatic 6.5 on the Richter scale, the serious damage inflicted upon historic Mission San Fernando, the Queen of Angels Seminary, and especially upon the so-recently established rare book library is graphically depicted and surveyed. It will most certainly pique collectors of miniature books and those acquiring materials on the San Fernando Valley earthquake to discover that only one hundred of the four hundred copies printed are offered for sale.

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